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ENGLISH  
BAR-STUDENT'S MANUAL.

MANCHESTER :

PRINTED BY J. ROBERTS, CHAPEL STREET, SALFORD.

A  
MANUAL  
FOR  
ENGLISH BAR-STUDENTS.

BY  
THOMAS SPENCE,  
OF TRINITY COLLEGE, DUBLIN, BARRISTER-AT-LAW;  
*Author of "The Stamp Laws of Mercantile Documents."*

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TO

SIR ROBERT PORRETT COLLIER, KNT.,

M.P., Q.C.,

HER MAJESTY'S SOLICITOR-GENERAL ;

*This Work*

IS INSCRIBED, BY

HIS SINCERE FRIEND AND FORMER PUPIL,

THE AUTHOR.

4-2-53

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## PREFACE.

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This work contains the New Rules of the Inns of Court, Lists of Text-Books and Books of Reference, a classified Digest of the Questions given at the Examinations of the Inns of Court, from the commencement in 1853 of the new system of Legal Education at the Inns of Court, to the end of last year (1863); and an Outline of each subject of study.

The object of the work is two-fold: to furnish an introduction to legal studies, and a test of their progress. Although principally intended, as the title indicates, for those who contemplate becoming members of the English Bar, it is nevertheless adapted for all law students. To members of the Inns of Court practising at, or under the Bar, the work may also be found useful in directing the studies of pupils, who, in accordance with the new rules of the Inns of Court (pp. 3—13), adopt one of the three alternative requisites for being called to the Bar. Indeed the work was commenced by the writer when a Special Pleader, to test the knowledge of his own pupils. The want of references to many of the propositions contained in the Outlines may be a ground of objection, but as these are merely introductory to

the text-books, they would have been of no practical use, and were therefore omitted. The contents of the work must, however, be left to the impartial judgment of its readers. Those who know the difficulties in preparing a work like the present, will be disposed to overlook the imperfections of its execution. The work has no pretensions to originality of thought. In an elementary work like the present, however, such an object is not requisite, even if attainable. The Outline of the principles of Equity has been prepared from Mr. Josiah W. Smith's "Manual of Equity Jurisprudence," by the kind permission of the author, and the publishers, Messrs. Stevens, Sons, & Haynes. The work of Mackeldy being very often used as a text-book for Roman Law, the Outline of that subject has been derived from that source. In the Outline of International Law, the writer has made ample use of the erudite labours of the late Chancellor Kent. The views expressed in the Outline of Jurisprudence will appear strange to the supporters of the principles of the late Mr. Austin, but whatever may be the merits of the views propounded by that distinguished thinker, they are open to great and serious objections.

An article on "THE BAR AS IT WAS; AS IT IS; AND AS IT MIGHT BE," was intended to have been inserted in this work; on further reflection, however, the paper has been omitted, as not exactly suited for a work intended for law students. Everyone, however, who is jealous of the reputation of the English Bar,



must rejoice at the institution of a preliminary examination for bar-students; this is a step in the right direction, and it is a subject of regret, that the new rules do not require a compulsory examination before a call to the Bar. Every student however, who regards his own interest, will pass one of the voluntary examinations. Studies of every kind are interesting in proportion to the object with which they are pursued, and if in the case of legal studies, this be only the hope of professional business in the future, the interest felt in the studies will be exceedingly slight. Whatever, however, may be the opinions regarding the propriety of a compulsory examination before a call to the Bar, one thing is certain, which is, that an important stimulus would be given to the studies of Bar-students, and the Bar, were inferior judgeships thrown open to *competition by examination*. If this principle should ever be introduced into the legal system of this country, new life would be infused into a body, which from the effects of modern legislation, the facility of admission, and other causes, cannot be regarded as altogether in a satisfactory condition. Many of the rules of etiquette too, are little adapted to the exigencies of the present day, and require revision. Each student will however do well to recollect Pope's line :

“Act well your part; there all the honour lies.”

By so doing, the student will be enabled to undertake with credit to himself, any business which may be

entrusted to him, when engaged in the active duties of his calling. He will also have the reflection, that although he cannot command, he may endeavour to merit success.

In conclusion, the writer has to express his obligations to Dr. Commins, of Lincoln's Inn, for several suggestions in the Outline of Jurisprudence. To several other barristers and bar-students, the writer is also indebted, for their suggestions and assistance in various ways.

THOS. SPENCE.

9, *King's Bench Walk, Temple.* }  
25th May, 1864. }

# TABLE OF CONTENTS.

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	PAGES
REGULATIONS OF THE INNS OF COURT .. .. .	3—13
CONSTITUTIONAL LAW AND LEGAL HISTORY.	
Outline .. .. .	17—61
Text-Books and Books of Reference .. .. .	62
Questions .. .. .	63—91
COMMON LAW.	
Outline .. .. .	95—137
Text-Books and Books of Reference .. .. .	138
Questions .. .. .	139—182
CONVEYANCING.	
Outline .. .. .	185—225
Text-Books and Books of Reference .. .. .	226
Questions .. .. .	227—272
EQUITY.	
Outline .. .. .	275—290
Text-Books and Books of Reference .. .. .	291
Questions .. .. .	292—348
INTERNATIONAL LAW.	
Outline .. .. .	351—362
Text-Books and Books of Reference .. .. .	363
Questions .. .. .	364—374
JURISPRUDENCE.	
Outline .. .. .	377—381
Text-Books and Books of Reference .. .. .	382
Questions .. .. .	383—388
ROMAN AND CIVIL LAW.	
Outline .. .. .	391—402
Text-Books and Books of Reference .. .. .	403
Questions .. .. .	404—431



REGULATIONS  
OF  
THE INNS OF COURT.



## NEW REGULATIONS OF THE INNS OF COURT.

Consolidated Regulations of Michaelmas Term, 1863, of the several Societies of Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn, (hereinafter described as the Four Inns of Court), as to the admission of Students, the mode of keeping terms, the calling of students to the Bar and Legal Education.

### *Admission of Students.*

1.—That every person who shall have passed a public examination at any of the universities within the British dominions, shall be entitled to be admitted as a student to any Inn of Court, for the purpose of being called to the Bar, or of practising under the Bar, without passing a preliminary examination; but subject to Rule 7, hereinafter contained.

2.—That every other person applying to be admitted as a student to any Inn of Court, for the purpose of being called to the Bar, or of practising under the Bar, shall, before such admission, have satisfactorily passed an examination in the following subjects, viz.:—

(a) The English and Latin Languages.

(b) English History.

3.—That such examination shall be conducted by a joint board, to be appointed by the four Inns of Court.

4.—That, for constituting such board, each Inn shall appoint six examiners.

5.—That the examiners shall attend according to a rota to be fixed by themselves, and that two shall be a quorum.

6.—That meetings of the examiners of students

applying for admission at any of the four Inns of Court, shall be held at least once in every week, between the 20th October and the 10th August in each year.

7.—That no attorney-at-law, solicitor, writer to the signet, or writer of the Scotch courts, proctor, notary public, clerk in chancery, parliamentary agent, or agent in any court original or appellate, clerk to any justice of the peace, or person acting in any of these capacities, and no clerk of or to any barrister, conveyancer, special pleader, equity draftsman, attorney, solicitor, writer to the signet, or writer of the Scotch courts, proctor, notary public, parliamentary agent, or agent in any court original or appellate, clerk in chancery, clerk of the peace, clerk to any justice of the peace, or of, or to any officer in any court of law or equity, or person acting in the capacity of any such clerk, shall be admitted as a student at any Inn of Court for the purpose of being called to the Bar, or of practising under the Bar, until such person shall have entirely and *bonâ fide* ceased to act or practise in any of the capacities above-named or described; and if on the rolls of any court, shall have taken his name off the rolls thereof.

8.—That the following forms shall be adopted by the said societies on applications for admission as members :—

I, \_\_\_\_\_ of \_\_\_\_\_ aged \_\_\_\_\_ the son of \_\_\_\_\_  
 of \_\_\_\_\_ in the county of \_\_\_\_\_ (*add father's*  
*profession, if any, and the condition in life and occupation,*  
*if any, of the applicant*), do hereby declare, that I am  
 desirous of being admitted a member of the Honourable  
 Society of \_\_\_\_\_ for the purpose of keeping terms  
 for the Bar, and that I will not, either directly or in-  
 directly, apply for or take out any certificate to practise,  
 directly or indirectly, as a special pleader, or convey-  
 ancer, or draftsman in equity, without the special  
 permission of the Masters of the Bench of the said  
 Society; and I do hereby further declare that I am not  
 an attorney-at-law, solicitor, writer to the signet, a  
 writer of the Scotch courts, a proctor, a notary public,  
 a clerk in chancery, a parliamentary agent, an agent to



any court original or appellate, a clerk to any justice of the peace, nor do I act directly or indirectly in any such capacity, or in the capacity of clerk of or to any of the persons above described, or as clerk of or to any officer in any court of law or equity.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ (Signature).

We, the undersigned, do hereby certify, that we believe the above-named \_\_\_\_\_ to be a gentleman of respectability, and a proper person to be admitted a member of the said society.

} Barristers of

Approved. \_\_\_\_\_ Treasurer.  
(or in his absence, by two Benchers).

9.—That every person applying to be admitted as a student shall pay the sum of one guinea upon application for the form of admission; and that the sums so paid shall form part of the common fund hereinafter mentioned, and shall every year be divided among the examiners for admission, in proportion to the number of examinations which during the year they shall respectively have attended.

### Keeping Terms.

10.—That students of the said societies, who shall at the same time be members of any of the Universities of Oxford, Cambridge, Dublin, London, Durham, the Queen's University in Ireland, St. Andrew's, Aberdeen, Glasgow, or Edinburgh, shall be enabled to keep terms by dining in the halls of their respective societies any three days in each term.

11.—That students of the said societies, who shall not at the same time be members of any of the said universities, shall be enabled to keep terms by dining in the halls of their respective societies any six days in each term.

12.—That no day's attendance in the respective halls shall be available for the purpose of keeping term,

unless the student attending shall have been present at the grace before dinner, during the whole of dinner, and until the concluding grace shall have been said.

*Calling to the Bar.*

13.—That every student of the said societies shall have attained the age of twenty-one years before being called to the Bar.

14.—That every student of the said societies shall have kept twelve terms before being called to the Bar, unless any term or terms shall have been dispensed with under the 46th Rule, hereinafter mentioned.

15.—That no student shall be eligible to be called to the Bar who shall not have attended during one whole year the lectures and private classes of two of the readers, or have been a pupil during one whole year, or periods equal to one whole year, in the chambers of some barrister, certified special pleader, conveyancer, or draftsman in equity, or two or more of such persons, or have satisfactorily passed a general examination. Provided, that students admitted before the 1st day of Hilary Term, 1864, shall have the option of qualifying themselves to be called to the Bar, either under the Rules of the Inns of Court of Hilary Term, 1852, or under these regulations.

16.—That no student of any of the said societies desirous of being called to the Bar, shall be so called, until the name and description of such student shall have been placed upon the screens hung in the hall, benchers' room, and treasury or steward's office of the society, 14 days in term before such call.

17.—That the name and description of every such student shall be sent to the other Inns of Court, and shall also be screened for the same space of time in their respective halls, benchers' rooms, and treasury or steward's offices.

18.—That no call to the Bar shall take place except during term; and that such call shall be made on the same day by the several societies, namely, on the six-

teenth day of each term, unless such day shall happen to be on Sunday, and in such case on the Monday after.

*Certificates to practise under the Bar.*

19.—That no student of any of the said societies shall be allowed to apply for or take out any certificate to practise, either directly or indirectly, as a special pleader, or conveyancer, or draftsman in equity, without the special permission of the masters of the bench of the society of which he is a student, to be given by order of such masters, and that no such permission shall be granted until the student applying shall have kept twelve terms.

20.—That such permission shall be granted for one year only from the date thereof, but may be renewed annually by order, as aforesaid.

21.—That no student shall be allowed to obtain any such certificate unless he shall have attended such lectures and classes, or passed such an examination, or been such pupil, as under the rules herein contained would be necessary to entitle him to be called to the Bar. Provided that students admitted before the first day of Hilary Term, 1864, shall have the option of qualifying themselves to obtain such certificates, either under the Rules of the Inns of Court of Hilary Term, 1852, or under these regulations.

22.—That the regulations herein contained as to screening names in the halls, benchers' rooms, and treasury or steward's offices, shall apply to students seeking certificates to practise as special pleaders, conveyancers, or equity draftsmen.

*Council of Legal Education.*

23.—That a standing council shall be established, to be called "The Council of Legal Education," and to consist of eight benchers, two to be nominated by each of the Inns of Court, and of whom four shall be a quorum. That the members of such council shall remain in office for two years, and that each inn shall

have power to fill up any vacancy that may occur in the number of its nominees during that period. That to this council shall be entrusted the power and duty of superintending the whole subject of the education of the students, and of arranging and settling the details of the several measures which may be deemed necessary to be adopted, and such other matters as herein in that behalf mentioned.

24.—That the Council of legal education shall have power to grant dispensations to students, who shall have been prevented by any reasonable cause from complying with all the regulations as to the attendance of lectures and classes which shall from time to time be established.

25.—That all arrangements touching the number of public lectures to be delivered by the readers, and the hours and extent of private classes, shall be left to the council.

#### *Educational Terms.*

26.—That for the purposes of education, the legal year shall be considered as divided into three terms, one commencing on the 1st November, and ending on the 22nd December; the second commencing on the 11th of January, and ending on the 30th March; and the third commencing on the 15th April, and ending on the 31st July; subject to a deduction of the days intervening between the end of Easter and the beginning of Trinity Term.

#### *Readers.*

27.—That for the purpose of affording to the students the means of obtaining instruction and guidance in their legal studies, five readers shall be appointed, viz. :—

- 1.—A reader on jurisprudence and civil and international law, to be named by the Society of the Middle Temple.
- 2.—A reader on the law of real property, to be named by the Society of Gray's Inn.

3.—A reader on the common Law, to be named by the Society of the Inner Temple.

4.—A reader on equity, to be named by the Society of Lincoln's Inn; and

5.—A reader on constitutional law and legal history, to be named by the Council of legal Education.

28.—That the readers shall be appointed for a period of three years.

29.—That the duties of the readers (subject to regulation by the Council of Legal Education) shall consist of the delivery of two courses of lectures in each educational term; of the formation of classes of students, for the purpose of giving instruction in a more detailed and personal form than can be supplied by general lectures; and of affording to students, generally, advice and directions for the conduct of their professional studies.

30.—That a separate course of lectures on international law shall be delivered, and shall for the present be delivered by the reader on jurisprudence and civil and international law.

31.—That it shall be part of the duty of the reader on the common law, to give instruction in his lectures on the subject of the office and duties of magistrates.

32.—That the readers on common law and on equity, shall have particular regard to the law of evidence in their lectures and other instruction to the students.

33.—That (subject to regulation by the Council of Legal Education) one of the course of lectures to be delivered by the reader on common law, the reader on equity, and the reader on real property shall be on the elementary, and the other on the more advanced portion to which his lectures apply.

#### *Emoluments of Readers.*

34.—That each reader shall receive the fixed sum of four hundred guineas a year.

35.—That the fees to be paid by students for the privilege of attending private classes, shall be dis-

tributed among the readers at the end of each year, in proportion to the number of students attending their respective private classes.

*Fees payable by Students.*

36.—That each student shall, on admission, pay a sum of five guineas, which shall entitle him to attend the lectures of all the readers.

37.—That each student shall be privileged to attend all the private classes, on payment of five guineas per annum.

*Examination on Subjects of Lectures.*

38.—That in the month of July, in each year, there shall be a voluntary examination of the students, upon the subjects of the several courses of lectures, but no student shall be entitled to go in for examination on any of the subjects, unless he shall have obtained a certificate from the readers, that he has duly attended his lectures and classes upon the subject on which he offers himself for examination. Each examination shall be conducted by some barristers or barrister (not being the reader of the class to be examined) to be nominated for that purpose by the council of legal education, and the council of legal education shall have power to allot such remuneration as they shall think fit to such examiners.

39.—That no student who shall be entitled to a certificate of having attended the advanced course of lectures of the reader on common law, on equity, or on the law of real property, shall be at liberty to go in for examination upon the subject of the elementary course of lectures on the same head; and that no student shall be admitted for examination on the subject of the elementary course of lectures, on any of the last-mentioned heads, after he shall have kept more than eight terms, or for examination on any of the subjects, after he shall have kept all his terms, unless in either case the Council of Legal Education shall for special reasons think fit to allow the same.

40.—That as an inducement to students to attend and make themselves proficient in the subjects of the lectures, exhibitions of the respective values hereinafter mentioned, shall be founded, and be conferred on the most distinguished students at the examinations in July.

41.—That five of such exhibitions shall be given to members of the advanced classes in the common law, in the law of real property, and in equity, and the most proficient among the students in jurisprudence, the civil law, and international law, and in constitutional law and legal history, every year; and be thirty guineas a year, to endure for two years, making ten running at one time.

42.—That three of such exhibitions shall be given to members of the elementary classes in the common law, in the law of real property, and in equity, and be twenty guineas a year, to endure for two years, making six running at the same time, but to merge on the acquisition of a superior studentship.

43.—That all the students attending the lectures of any of the readers shall be at liberty to attend the several oral examinations; and that all members of the Inns of Court, who shall have obtained written orders of admission from any of the readers, or from any bencher of any of the societies, shall also be at liberty to attend such examinations.

#### *General Examinations.*

44.—That General Examinations shall be held twice a-year for the examination of all such students as shall be desirous of being examined previously to being called to the Bar, and such examinations shall be conducted by at least two members of the Council, jointly with the five readers, and certificates of having satisfactorily passed such examination shall be given to such students as shall appear to the examiners to be entitled thereto.

45.—That such examinations shall be held in or shortly before Michaelmas Term, and in or shortly before Trinity Term.

46.—That as an inducement to students to propose themselves for such examination, studentships and exhibitions shall be founded, of fifty guineas per annum each, and twenty-five guineas per annum each respectively, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each general examination, and one such exhibition shall be conferred on the student who obtains the second position; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations, and the Inns of Court to which such students as aforesaid belong, may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided, that the examiners shall not be obliged to confer or grant any studentship, exhibition, or certificate, unless they shall be of opinion that the examination of the students has been such as entitles them thereto.

47.—That at every call to the Bar, those students who have passed a general examination, and either obtained a studentship, an exhibition at such examination, or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day.

### *Common Fund.*

48.—That the four Inns of Court shall form a common fund by annual contributions, the amounts of which shall be mutually agreed on; and out of which fund shall be drawn the stipends to be assigned to the readers, the remuneration to examiners, and such studentships and exhibitions as shall from time to time be conferred upon students, and such necessary expenses as shall be incurred by the Council of Legal Education.

49.—That the fees of five guineas paid by students on admission shall form part of the common fund.



*Commencement.*

50.—That these regulations shall take effect as from the first day of Hilary Term, 1864.

The above regulations were sanctioned and confirmed by orders of the several societies, as undermentioned :—

Middle Temple, 18th December, 1863.

Gray's Inn, 18th December, 1863.

Lincoln's Inn, 22nd December, 1863.

Inner Temple, 22nd December, 1863.



CONSTITUTIONAL LAW

AND

LEGAL HISTORY.



## OUTLINE OF CONSTITUTIONAL LAW AND LEGAL HISTORY.

Until the accession, in 1154, of HENRY II. to the throne, we do not discover any of the distinctive features of our Constitutional Law. Trial by jury had then become fully established, although until the reign of Henry VI. this method of trial was in reality a trial by witnesses. By Henry II. however justiciaries were appointed to try criminal cases in the king's name, and instead of trial by battle the *Assiza* was substituted by Chief Justice Glanville. The Constitutions of Clarendon defining the limits between the civil and ecclesiastical jurisdictions, and to prevent the encroachments of the clergy, were enacted in 1164 by this monarch, whose memorable dispute on the subject with Thomas A'Beckett is known to every student of history. The reign of this monarch was also remarkable for the endeavours of the monarch to lessen the power of the nobles, and to abolish the distinction between the English and the Norman races.

RICHARD I. was the next monarch, and reigned ten years. The time of *legal memory* when a prescription is claimed *as at common law* is reckoned from this king's accession, which was in 1189. In this reign the laws of Oleron relating to maritime affairs were made, when the king was at the island of Oleron.

In 1199, JOHN succeeded to the crown. During his reign the foundations of English liberty were laid. There was, indeed, a charter of Henry I. in existence, but its provisions were mainly intended to redress several hardships of the feudal system. The infamous character of John, and the events which gave rise to

the grant of Magna Charta by that monarch are too well known to need to be noticed here. By Magna Charta, the worst grievances of every military tenant in England were redressed. The Court of Common Pleas was required to be held in a fixed place, a freeman was to be amerced according to the nature of his crime, and justices of assize were to visit each county four times a year. Commercial relations were also promoted by Magna Charta, clause 41 being: "All merchants shall have safe and secure conduct to go out of, and to come into England, and to stay there, and to pass as well by land as by water, for buying and selling by the ancient and allowed customs without any evil tolls, except in time of war, or when they are of any nation at war with us. And if there be found any such in our land in the beginning of the war, they shall be attached without damage to their bodies or goods until it be known to us or our chief justiciary how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions."

The essential clauses of Magna Charta are those which secure the personal liberty and property of every subject. They are: 39. *No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him unless by the lawful judgment of his peers, or by the law of the land*; and 40. *We will sell to no man, we will not deny or delay to any man, either justice or right*. To Stephen Langton, Archbishop of Canterbury, England, is mainly indebted for this Charter, that Prelate having been the principal adviser and instigator of the barons who withstood John, and compelled that despot, by force of arms, to accede to what has been truly termed "the bulwark of our constitution."

John was succeeded in 1216 by his son, named HENRY III. At the time of his accession, Henry was but ten years of age, and a regency accordingly took place until the monarch became of age in 1223. During the regency, Louis, the son of Philip of France, was

obliged to surrender, and to retire from England. From his marriage with a French princess, Henry acquired a partiality for foreigners, whom he appointed to several high offices in the state. This circumstance gave great offence to the nation, while the large sums required for the long and unsuccessful warfare on the continent caused continual disputes between the monarch and the nobles. The defeat of the English forces in 1242 brought matters to a crisis, and the supplies asked for the king were peremptorily refused. In 1253 Henry again met his nobles; but, distrustful of him, they compelled him to swear to observe the charters of the nation. A mortgage by the monarch of the kingdom, to help to pay the expenses incurred in conquering Sicily, was the next circumstance which disgusted the nation, as on the conquest of the island the king was obliged to ask for supplies to liquidate the amount. A committee of barons was then appointed to manage the affairs of the nation, in conjunction with the king. Though at first distinguished for moderation, the barons afterwards became so arbitrary in their proceedings that civil war broke out between the king and them. Prince Edward, the son of Henry, took the field with an army. At the battle of Lewes the royalists were defeated by the Earl of Leicester, and the King and Prince Edward taken prisoners. The earl then took the affairs of the kingdom into his own keeping, and compelled the king to do whatever he bade. Leicester was, however, far from popular. Partly to increase his popularity, as well as from other causes, Leicester in 1265 "directed the sheriffs to elect and return two knights for each county, two citizens for each city, and two burgesses for each borough in the county," thus laying the foundation of the English House of Commons. The fortunes of war are, however, proverbially uncertain. Prince Edward subsequently escaped from his confinement, and again took the field with the royal forces. Success crowned the efforts of the royalists at Kenilworth and Evesham, and at the latter place Leicester was killed. Henry was restored to the throne, and his subsequent

career was distinguished by moderation and prudence. Henry III, after reigning 57 years, was succeeded by his son Edward I.

In the reign of EDWARD I. numerous laws were passed. Among the most important were the Confirmation of the Great Charter and the Charter of the Forest; the abolition of the exaction of aids, *unless with the consent and to the common profit of the realm*; and the institution of conservators of the peace, or justices of the peace, as they are now called. In this reign were also enacted the statutes: DE DONIS CONDITIONALIBUS, to which estates tail owe their origin, and QUIA EMPLORES, prohibiting the subinfeudation of land.

EDWARD II., the son of Edward I. was the next king, and succeeded to the crown in 1307, on the death of his father. His reign was an unfortunate one, from his selection of favourites, and his incapacity as a monarch. His memorable defeat at Bannockburn by the Scotch increased the discontent of his subjects. Discontent ripened into revolt, and the monarch was deposed. Upon his deposition the crown was conferred upon his son, Edward III., and the late monarch was shortly afterwards cruelly murdered, at the instigation of his queen and the Earl of Mortimer. During the reign of Edward II. the *Articuli Cleri*, defining the boundaries between the jurisdiction of the temporal and ecclesiastical courts, and the privileges of the clergy, were passed; and the first instance of a petition by the commons, for the redress of grievances, occurred.

The first act of EDWARD III., when he came of age, was to cause the overthrow of Mortimer and the late queen. The former was brought to trial for the murder of Edward II. and executed. The latter, mother of the monarch, was confined to perpetual seclusion for life. The famous battle of Cressy, in 1346, with Philip of France, occurred in this reign. The enactment of the STATUTE OF TREASONS, defining what acts committed by a subject constitute treason, and the right to impeach offending ministers, are, however, the occurrences which render this reign memorable in constitutional history.



Edward III. died in 1377, and was succeeded by his grandson, Richard II., son of the Black Prince.

RICHARD II. was an ill-fated monarch. At the beginning of his reign occurred the memorable insurrection of the peasantry, led by Wat the Tyler. The causes of the revolt are too well known to need to be stated here. At this period, society in England may be divided into the three classes of nobles, burgesses, and peasantry. In this reign the rising power of the commons was shown by their vigorous representations of grievances, and their impeachment of the Earl of Suffolk. For several years after 1389, however, Richard changed his mode of administration, and governed vigorously and well. The tyrannical conduct of the monarch during the last two years of his reign caused Henry Bolingbroke and the Earls of Northumberland and Westmoreland to take the field against him, while absent in Ireland. On the monarch's return to England he was obliged to succumb to Henry Bolingbroke, and shortly afterwards, in 1399, abdicated the throne. Richard's end is doubtful, but he is supposed to have been murdered.

Richard II. was succeeded by Henry Bolingbroke, who became king with the title of HENRY IV. He was the son of John of Gaunt, Duke of Lancaster, third son of Edward III. That monarch had, however, an older son, Lionel, Duke of Clarence, whose grandson, the Earl of March, was the legal heir to the throne. Insurrections to place the earl on the throne were suppressed, and Henry was left undisturbed in his regal functions during the remainder of his life. In this reign the right of the commons to originate money bills was first conceded. Henry IV. died in 1413, and was succeeded by his son, Henry V.

The reign of HENRY V. is memorable for his wars with France. At Agincourt, in 1415, the French met with a disastrous defeat. The following year the war was renewed, and continued until 1420, when the treaty of Troyes took place. Henry died in 1422, and was succeeded by his son, Henry VI.

During the reigns of Henry VI., Edward IV., Edward V., and Richard III., the attention of the nation was principally engaged by the long civil wars between the houses of York and Lancaster. In the reign of Henry VI., however, a statute was passed confining the right of election for knights of the shire to owners of *free land* or *tenement* to the value of forty shillings by the year at least, above all charges. By the decision of the judges, in the reign of Edward IV., declaring a common recovery a sufficient bar of an estate tail, the evil effects of the statute *DE DONIS* were much diminished. This important decision is known by the name of *TALTARUM'S CASE*. The civil wars at length were terminated, in 1485, by the decisive battle of Bosworth-field, when Henry Tudor, Earl of Richmond, utterly defeated the forces of Richard, who was slain in the battle; while the earl was saluted by cries of "Long live King Henry."

HENRY VII., the first of the House of Tudor, was a descendant of John, Earl of Somerset, an illegitimate son of John of Gaunt, Duke of Lancaster. Henry's title to the throne was therefore quite worthless, in a legal point of view, and he therefore wisely strengthened his position by his marriage with the Princess Elizabeth of York, daughter of King Edward IV. Thus were the contending factions of the Houses of York and Lancaster reconciled. In this reign occurred two memorable insurrections; the first on the occasion of the personation of the Earl of Warwick, by Lambert Simnel; and the second when Perkin Warbeck assumed the name and character of the Duke of York, who, with his brother, Edward V., was generally supposed to have been murdered in the Tower. Both insurrections were, however, speedily suppressed, and the nobles and gentry who had taken part in them, attainted. Simnel was considered too ignoble for resentment, while Warbeck was sent to the Tower. There he entered into correspondence with the Earl of Warwick, for the purpose of effecting their escape. This unfortunate nobleman was the son of the Duke of Clarence, and being the nearest

male heir of the House of York, had been kept in close confinement by Henry. The correspondence was discovered, Warwick and Warbeck were brought to trial for treason, and executed. The remainder of this reign was undisturbed by civil discord.

In this reign a statute was enacted making allegiance to a monarch *de facto* a protection to a subject from criminal process, while by another statute a fine levied with proclamations in court was, after five years, made a bar to all claims on land.

Henry kept his nobles in great subjection. From the numerous attainders, the enforcement of statutes inflicting penalties, and the king's parsimonious habits, Henry became exceedingly wealthy. Henry died in 1509, leaving an immense patrimony to his son and successor Henry VIII.

HENRY VIII. was a monarch whose equal for tyranny, rapacity and cruelty, has never occupied the English throne. Henry's famous quarrel with the Pope, its cause and results, the suppression of the monasteries, and the king's assumption of the ecclesiastical supremacy in this realm are too well known to require notice here. Notwithstanding Henry's illegal exactions, and his cruel execution of Anne Boleyn and others, he was popular with his subjects, but only on account of his support of the Reformation. Henry's parliaments were characterised by servility, of which we have a notable instance in the act passed in 1539, giving to the proclamations of the king and council the force of statutes, *so that should not be prejudicial to any person's inheritance, offices, liberties, goods, and chattels, or infringe the established laws.* However, the words restricting the force of the proclamations might as well have been omitted, for in an age when parliament cowered beneath the frown of a sanguinary tyrant, his will was law. In 1539, the LAW OF THE SIX ARTICLES was passed, establishing the real presence, communion in one kind, the perpetual obligation of vows of chastity, the utility of private masses, the celibacy of the clergy, and the necessity of auricular confession.

The denial of these articles of faith, subjected the offender to be burned or other punishment. Henry died in 1547, and was succeeded by his son Edward VI.

EDWARD VI. was the son of Jane Seymour, the third wife of Henry VIII. As Edward was only nine years of age on his accession to the throne, the king's uncle, the Duke of Somerset was appointed regent. During this reign the statute giving the king's proclamation, the force of law was repealed, and the liberty of the subject promoted by an enactment requiring the evidence of *two witnesses confronted with the accused*, for a conviction in cases of high treason. Edward's reign is however, chiefly remarkable for the advancement of education, and the establishment of the Protestant form of religion. In many towns grammar schools were established, and liberally endowed. On the establishment of Protestantism, the Articles of and the Liturgy of the Church were framed by Cranmer, Archbishop of Canterbury, in conjunction with other divines. The Duke of Somerset at length fell a victim to the machinations of his enemies, and having been found guilty on his own confession of intending to murder three noblemen, Northumberland, Warwick, and Northampton, he was executed. The Duke of Northumberland, one of the governors of the young king, then became the principal administrator of the affairs of the nation. By Northumberland the young king was induced to devise the crown in favour of Lady Jane Grey, who had married that nobleman's son. Lady Jane was the great grand-daughter of Henry VII. being the grandchild of Mary queen of France, by the Duke of Suffolk. The lustre of Edward's reign is unfortunately somewhat dimmed by the condemnation to the stake of a woman named Joan Boucher and Van Paris, a Dutchman, for their religious opinions. The death of Edward VI. took place on the 6th July, 1553, and after a futile attempt on the part of the Duke of Northumberland to place Lady Jane Grey on the throne, Mary, Henry VIII.'s daughter by Catherine of Arragon was declared queen.

On ascending the throne MARY proceeded to restore the Popish religion. Gardiner and other eminent Roman Catholic personages were released from prison, and restored to power and favour. A statute was shortly afterwards enacted by the parliament re-establishing the form of religious services in use at the death of Henry VIII. Much discontent was caused by the proposal of the queen to marry Philip of Spain. A formidable insurrection headed by Sir Thomas Wyatt broke out, but was suppressed, and a large number of his followers executed. Shortly after this rebellion was quelled, Lady Jane Grey was executed. This was the most barbarous act of Mary's reign, for Lady Jane's crime arose more from filial obedience than ambition. In 1554 the parliament gave their assent to the queen's marriage with Philip, on condition that Mary was to be sole monarch during her life, and that her consort should have no claim to the throne after her death, in case of her leaving no issue. The wedding accordingly took place in July of that year. The remainder of Mary's reign was disgraced by numerous religious persecutions of Protestants. Among the eminent personages who perished at the stake, were Cranmer, Ridley, and Latimer. The loss of Calais, which took place at the end of Mary's reign, was deeply felt by the English, and by none more than Mary. This regard for national honour was the only redeeming feature in her character. Unlamented by her subjects, Mary died on the 17th November, 1558, and was succeeded by Elizabeth.

ELIZABETH, the daughter of Anne Boleyn, on her accession to the throne adopted a conciliatory policy. Having however, been educated in the Protestant faith, and hearing that the Papists were hostile to her, Elizabeth, immediately after her coronation proceeded vigorously to re-establish Protestantism. For this purpose, the Acts of Supremacy and of Uniformity were enacted. By the former act the queen was declared supreme head of the church, and all ecclesiastical persons, judges, justices, mayors, and persons

holding offices, were required to take an oath acknowledging the queen's sole supremacy in all matters, ecclesiastical and temporal within the realm, and disowning the jurisdiction within the realm of any foreign prince or prelate in such matters. Power was also given to the crown to appoint commissioners to suppress heresy, which was the origin of the High Court of Commission. By the Act of Uniformity the Book of Common Prayer as ordained by Edward VI. with the order of service, administration of sacraments, rites and ceremonies, but with some additions and alterations was declared to be in full force, and its use enjoined on every minister of the church under the penalty of imprisonment and deprivation. By the same act a penalty was imposed on all who absented themselves from church on Sundays and holidays. By another act, first fruits and tenths were annexed to the crown.

In enforcing the Act of Uniformity, Elizabeth met with considerable opposition from the bishops and other ecclesiastical dignitaries. Their places were therefore vacated and supplied by persons favourable to the Protestant faith. During this reign, the religious parties were three in number—the Episcopalians, the Papists, and the Puritans. To the Puritans Elizabeth was decidedly hostile. At them was levelled the Act of Uniformity. In 1572, however, severe measures were enacted against the Roman Catholics, on the occasion of the publication in London of a bull of Pius V., excommunicating Elizabeth, the 13 Eliz., c. 2 making the publication of any bull from Rome, or the absolution and reconciliation of any one to the Romish Church, or the being so reconciled, high treason; while the importation into the realm of any crosses, pictures, or superstitious things consecrated by the Pope, or under his authority, rendered the offender liable to a premunire. Several other acts were passed during Elizabeth's reign against the Papists; but when we consider that, both on the continent and in this country, numerous plots were formed by the Romish party against her life, these

measures may be palliated, although they cannot be excused.

Elizabeth had exalted notions of her prerogative in church and state. Her arbitrary acts, the proceedings of the High Court of Commission, and the judicial murders perpetrated under the name of trials in this reign, have brought discredit on this monarch. Elizabeth's vigorous government however, her spirited conduct when the Spanish armada threatened our shores, and her advancement of the national interests, made her popular with the nation. During this reign 62 borough members were added to the House of Commons, the injurious system of monopolies attacked, and the first poor laws instituted. Elizabeth, the last of the Tudors, died in 1603, and was succeeded by James VI. of Scotland and I. of England.

The legal title of JAMES I. to the crown of England was doubtful. In his person, it is true, centered all the claims to the throne by hereditary succession, but as Henry VIII., by virtue of a statute passed in the 35th year of his reign, had made a will, leaving—in case of the death of Edward, Mary, and Elizabeth, without issue—the throne to the issue of his sister Mary, the Duchess of Suffolk, the legal title to the throne was in the House of Suffolk. That statute, however, required the will to be signed with the king's own hand; and as, according to some opinions, that document has only a stamp affixed, it may be considered inoperative. Mr. Hallam, however, considers the will as duly signed, but this supposition is quite inconsistent with the circumstance that the House of Suffolk made no effort to establish its claims to the throne. Even if we regard the will as duly executed, its provisions appear to have been superseded by a statute passed on the marriage of Mary with Philip of Spain, declaring “as touching the right of the queen's inheritance in the realm and dominions of England, the children, whether male or female, shall succeed in them, according to the known laws, statutes, and customs of the same.” However, whatever may have been the reasons, all parties, on the

accession of James, appear to have regarded the will of Henry VIII. as inoperative, and to have considered the hereditary claims of James a sufficient title to the throne. James was the great grandson of Margaret, daughter of Henry VII., and wife of James IV., King of Scotland. As Margaret was the eldest daughter of Henry VII., on her issue devolved the right to the throne, when the line of Henry VIII. became extinct by the death of Queen Elizabeth without issue. The hereditary claims of James to the throne were therefore indisputable. Accordingly, immediately after the accession of James, the parliament, by statute 1 Jac. 1, c. 1, did "recognize and acknowledge that immediately upon the dissolution and decease of Elizabeth, late Queen of England, the imperial crown did, by inherent birthright, and lawful and undoubted succession, descend and come to his most excellent majesty, as being lineally, justly, and lawfully next and sole heir of the blood royal of this realm."

Early in this reign the House of Commons displayed an independent spirit. Thus, in the first parliament of James, in 1604, a remarkable document was put forth by the Commons, called *A Form of Apology and Satisfaction*. It protests against various arbitrary acts of James, and maintains that the privileges and liberties of the Commons are their right and inheritance, no less than their very lands and goods; that they cannot be withheld or impaired, and that the House of Commons is the sole judge of the returns of the writs for the election of its members, and of their election. Numerous other conflicts took place between James and the Commons. In 1621 a document was framed by the parliament, declaring the right of the Commons to all their privileges, as the birthright and inheritance of the subjects of England; the right of every member of the House to debate on all public matters, and freedom of speech.

Among the state trials in this reign was that of Peacham. He was apprehended on a charge of high treason, for writing a sermon strongly censuring the



king. The sermon was not published, and there was no evidence of an intention to publish. Peacham was then racked, in the hope that he would confess; but not doing so, the judges were consulted, Peacham was put on his trial, found guilty, but not executed. This decision was over-ruled in the next reign by Pine's case, declaring that no words, however wicked or mischievous, would of themselves amount to treason within the statute of Edward III.

Towards the end of this reign, James had one great object in view, and that was to marry the Prince of Wales to the Infanta, daughter of Philip IV., who had been recommended as a desirable match for the heir to the British throne. The project was however defeated by the repugnance of the nation to the match. In James's opinion the royal prerogative was bounded by no limits, but from his pusillanimous disposition, his want of energy, and still more from the spirit of independence of the Commons it was harmless. Possessed of no small share of learning, James nevertheless lacked prudence. Prodigal of his resources he enforced the penal acts against the Puritans and Catholics, in order to obtain money for his exchequer. In general, the faults of James were more those of the head than of the heart, but for his execution of Sir Walter Raleigh, under a sentence passed 15 years before, in order to please the Spanish nation, no excuse can be made.

James died in 1625, and was succeeded by his son Charles I.

With the accession of CHARLES THE FIRST we enter upon a memorable period of English history. Unlike his father, Charles was polished, courteous and religious, but from his selection of unworthy favourites, his desire to obtain absolute power, and still more his insincerity differences soon arose between the king and his parliaments. His first parliament Charles abruptly dissolved, after he obtained a considerable subsidy to meet the expenses of the war. His second parliament when about to try the Duke of Buckingham, the king's

favourite, on an impeachment, met with a similar fate to its predecessor. The next proceeding of Charles was to obtain money by illegal proceedings, and amongst other modes he adopted was, the demand of a loan from each subject, according to the rate at which he was assessed in the last subsidy, and proportioned to his property. Five knights, Darnel, Corbet, Earl, Heveningham, and Hampden having refused to contribute to the loan were committed by a warrant of the Privy Council to the Fleet prison. They then sued out a writ of *habeas corpus* from the Court of King's Bench, and a return to the writ was made by the warder of the Fleet, stating that the warrant did not express the nature of the charge, but that the parties in custody had been committed by special command of the king. The sufficiency of the return and as a necessary consequence that of the warrant of commitment were then ably argued by Noy, Selden, and Whitelock for the prisoners, while the attorney-general, Robert Heath appeared for the crown. One of the arguments employed by the attorney-general was from the maxim "the king can do no wrong" that there must have been a sufficient cause of commitment although not set forth in the warrant. "The court to their lasting disgrace," says Lord Brougham, decided both in favour of the sufficiency of the return, and the validity of the warrant. The prisoners were accordingly remanded to prison.

In 1628 Charles after releasing several persons who had been imprisoned for refusal of contributions reluctantly summoned his first parliament, in order to obtain money to carry on the war. The sudden dissolution of the first two parliaments of Charles only tended to make the Commons in the third parliament more determined than their predecessors to resist the arbitrary proceedings of the king, but instead of trying to conciliate the Commons, Charles at the opening of the session made use of menacing language to them in case they should not vote the necessary supplies. The Commons, however, instead of complying with this

menace, at once proceeded to take into consideration the redress of grievances. These grievances were embodied in a remonstrance called the Petition of Right praying, (1.) that no gift, loan, benevolence, or tax, might be levied without consent of parliament; (2.) that none should be imprisoned, confined, detained, questioned, or molested for refusal to pay any of these contributions; (3.) that soldiers and marines, should not be quartered on people against their will; and (4.) that no commissions for proceeding by martial law might be granted. The petition having been passed by the Peers, was presented to Charles for his assent, when a notable instance of his duplicity took place, for instead of adopting the usual form of assent to bills, he returned an equivocal answer apparently framed in such a manner as not to interfere (in his opinion) with the royal prerogative. This proceeding excited the resentment of the Commons, and Charles shortly afterwards went down in person to the House and assented to the bill in the usual form. The Commons then granted the king five subsidies together amounting to a considerable sum, but as the Commons showed signs of a determination to proceed to the redress of other grievances Charles prorogued the parliament. During the recess Charles caused a large number of copies of the Petition of Right to be circulated with only his first answer annexed: an act of meanness and of folly in a monarch almost unimaginable. The assassination of the Duke of Buckingham at this period by a man of the name of Felton gave rise to a memorable decision by the judges that torture was illegal.

On the re-assembling of parliament the Commons again proceeded to take into consideration the redress of grievances. The enforced payment of tonnage and poundage from the merchants was the principal subject which occupied the attention of the Commons. Violent disputes took place between the king and the Commons on the question, and shortly afterwards Charles angrily dissolved the parliament.

For twelve years afterwards Charles managed the

affairs of the nation without a parliament, and freed from the control of that assembly, committed as might have been expected, numerous arbitrary acts. Hardly had the late parliament been dissolved before three of the king's leading opponents in the Commons, Elliot, Holles, and Valentine, were prosecuted and fined, notwithstanding their objection that the court had no jurisdiction for things done or said in parliament. Without a parliament Charles was obliged to resort to other methods to obtain money to meet the expenses of the government. Compositions for refusal of knight-hood by the the tenants of the crown *in capite*, the enforcement of the harsh forest laws, and the revival of the system of monopolies in trade (although declared illegal in the preceding reign) produced considerable sums to the exchequer. A mode of raising money was however revived, which (although obsolete for ages) seemed likely to furnish a perpetual supply for the exigencies of government, and this was the enforcement of ship-money: an ancient assessment on maritime towns in times of danger from invasion, to provide ships. Though at first the assessment was confined to the maritime towns it was afterwards extended to the inland districts. The collectors of the ship-money encountered considerable opposition in these districts and at length, in 1637, John Hampden, a country gentleman of Buckinghamshire, determined to try the legality of the assessment. Accordingly he refused payment of the sum demanded from him, and proceedings having been instituted against him, the question came on for argument before the Court of Exchequer Chamber. The arguments on behalf of Hampden, based as they were on the Confirmation of the Charters, and other express enactments prohibiting taxation without the consent of parliament, were unanswerable, but the doctrine of the absolute power of the crown prevailed with the majority, consisting of seven of the twelve judges. The five other judges decided in favour of Hampden for various reasons. Judgment was accordingly given for the crown, but so far from increasing the power of

the monarch it only strengthened the hands of his opponents. The introduction of Romish practices into the service of the church also increased the discontent of Charles's subjects, but his attempt at this period (1637) to compel the introduction of the episcopal liturgy into the churches in Scotland caused an outbreak of popular indignation which made the king pause in his career of unbridled power. The following year (1638) the Scots entered into the famous National Covenant, took up arms, and in a great measure made themselves masters of the country. The Scotch forces then advanced to Berwick, and the king having marched with an army to the neighbourhood of that town a pacification took place between Charles and the Scots. Without resources, however, Charles was obliged to disband his army, while the Scots took care to hold their forces ready for any emergency. After the treaty the Scots were almost more hostile than before, and as the state of matters did not improve, Charles in April 1640, reluctantly assembled his fourth parliament. Nearly twelve years had elapsed since the last parliament had assembled, and from this circumstance the advisers of Charles fondly hoped that the Commons would display a less independent spirit than their predecessors in this reign, and vote with alacrity the requisite supplies. Instead however of doing so the Commons at once began to take into consideration the question of grievances. Charles repeatedly urged the Commons to proceed with the vote of supplies, but they resented the interference. Charles shortly afterwards angrily dissolved the parliament before any supplies had been voted. This act of indiscretion on the part of the king greatly increased the general discontent, and as the Scotch forces had crossed the border, and seemed likely to possess themselves of the northern counties, Charles was obliged to adopt instant measures to repel the foe. For this purpose he borrowed large sums from private friends, sold for cash goods purchased on credit, and adopted other expedients for raising money. With the sums thus procured Charles managed to muster a

considerable army. In an engagement between some of the forces of Charles, and the Scots the latter had the advantage, and as the king saw no prospect of an improvement in the state of matters he consented, though much against his will, to call another parliament which met in November, 1640. This was the fifth parliament which had assembled in this reign, and is known in English history as the Long Parliament. On the opening of parliament the sympathies of the Commons were evidently with the Scots, and Charles wisely, making a virtue of necessity, took care not to come into collision with the parliament. Statutes to abolish tonnage and poundage, ship-money and monopolies were passed, the duration of parliaments limited to three years, but the most important legislative enactment was the suppression of the Courts of Star Chamber and of High Commission.

Against the king's principal adviser the Commons did not fail to manifest their resentment. The Earl of Strafford, formerly Lord Wentworth, having returned from Ireland shortly after the opening of parliament, was committed to the Tower by the Commons. Articles of impeachment were then prepared against Strafford, and the trial took place in March, 1641. Most of the charges against Strafford were those of subverting the constitution, and making the crown absolute, but even if they had been proved, they clearly did not constitute the crime of treason. Some of Strafford's proceedings while in Ireland, and forming the subject of some of the charges, did however in the opinion of the judges, who were consulted by the peers, render him liable to the pains and penalties of treason, but the proof of these proceedings was by no means conclusive. This circumstance did not however prevent the peers from finding Strafford guilty of these treasonable proceedings. The Commons however determined to discontinue the impeachment and to proceed by bill of attainder against Strafford. A bill of attainder accordingly passed both Houses, and on being presented to the king for his signature, caused the monarch the greatest

perplexity and distress, for shortly before Strafford returned from Ireland, Charles had given him a personal assurance "that not a hair of his head should be touched." In vain the king entreated the peers to find Strafford guilty of a less offence than treason. Charles was at length relieved from his perplexity by a message from Strafford, requesting that his life might be sacrificed, if likely to promote a reconciliation between the king and his subjects. Charles, although now released from his promise of protection to Strafford, again remonstrated with the peers, but intimated that if Strafford's death was absolutely required, he would consent to his execution. The result of this disgraceful act on the part of Charles may be easily imagined, and Strafford was shortly afterwards executed. Strafford was possessed of much natural talent, and the defence he made on his trial was one of great eloquence and ability. There was no question however but that Strafford was a most dangerous enemy to the liberties of his country, and his tyrannical acts, although they did not deserve the penalty of death, were such as might justly have been visited by banishment from the realm.

The servility of Charles to his parliament in acceding to the execution of Strafford paved the way for a still greater infringement of constitutional rights, by the enactment of a statute prohibiting the dissolution of parliament without its own consent. There was however a suspicion prevalent among the Commons, that there was a plot in preparation by the king for their overthrow. On this account they originated the bill, and the speedy assent given to it by the king seems to confirm this suspicion, or possibly his acquiescence may have been intended to allay the distrust of the Commons.

The deplorable massacre of Protestant settlers in Ireland, for a time, caused suspicion to attach to Charles, but at the commencement of the following year (1642), Charles had regained his popularity from having wisely selected as his ministers three of the leading members

of the liberal party. Scarcely however had the parliament re-assembled at the beginning of this year, before Charles again became as unpopular as ever by his attempt to seize in the House of Commons five of its members, named Pym, Hollis, Hampden, Haselrig, and Strode, on a charge of high treason. The particulars of this attempt are too well known to need to be mentioned here, but there can be no doubt that this infringement of the privileges of the Commons was the precursor of the civil war. Shortly after this attempt the royal assent was given to an act to prevent the bishops and archbishops from sitting in the House of Lords. The refusal however of the king to consent to a bill of the Commons to place the militia under the command of lieutenants of their own choice, to be appointed by the king, was however the ostensible cause of the outbreak of civil war, and the parliament at once took measures to place the kingdom in a state of defence. The king retired to the north, and hoisted the royal standard at Nottingham, in August, 1642. At first, the royalists had decidedly the advantage over their opponents, but in the campaign of 1644, they were worsted, and sustained a signal defeat at Marston Moor. At Naseby in 1645, the royalists were thoroughly vanquished, and after several minor conflicts the civil war terminated in favour of the parliament. In deep distress Charles at length surrendered himself to the Scots, and was by them delivered up to the Parliamentary Commissioners on the receipt of the arrears of pay due to the Scotch troops. For this act the Scots have had to encounter severe animadversion, but much may be said on both sides of the question. Charles's subsequent confinement in different castles, his memorable trial and illegal condemnation, and his execution on the 30th January, 1649, are known to every student of history.

The period of the commonwealth does not belong to our subject.

The restoration of CHARLES II. to the throne however introduces us to an important era in constitutional



history. The memorable proclamation from Breda, before Charles returned to these shores, had produced a favourable impression. On the 29th of May, 1660, Charles entered London and everywhere met with an enthusiastic reception. The convention parliament then proceeded to adopt measures to remedy many of the mischiefs caused by the overthrow of the monarchy. A general amnesty act was passed, but the leaders in the condemnation and execution of Charles I. were excepted from its provisions. Thirteen persons however only were executed. The abolition of the military tenures was the next measure of importance passed by the parliament, and with it all the hardships incident to these tenures disappeared. This act is entitled the 12 Car. II. c. 24, as the reign of Charles is reckoned from the commencement of his legal title to the throne, and not from his actual accession. The restoration of the church lands also took place, but the greatest benefit conferred on the country was the disbanding of the standing army, with the exception of Monk's regiment and two others. The king was provided with a handsome revenue, and after those important measures the convention parliament was dissolved.

A new parliament was shortly afterwards assembled to give validity to the proceedings of the convention parliament, which, from the circumstances of the times, had not been summoned by the king's writ. The new parliament was even more devoted to the monarch than its predecessor. The execution of Sir Harry Vane at the instigation of the Commons was a disgraceful proceeding, as his acceptance of office during the commonwealth was clearly no ground of condemnation. A course of legislation then ensued, which has brought discredit on this reign. The first of these measures was the Corporation Act which prohibited all persons from holding any corporate office unless they were members of the Church of England, and had sworn to the doctrine of passive obedience. The next was the Act of Uniformity, which required all ministers to subscribe an unfeigned assent and consent to every

particular of the book of common prayer under penalty of deprivation, to take an oath of passive obedience, and rendered all those who had not had episcopal ordination incapable of holding any ecclesiastical benefice. This act came into force on St. Bartholomew's day (24th August, 1662), and its effect in depriving the church of a large number of conscientious and talented ministers is known to every reader of history. The following year (1663) the Triennial Act of the Long Parliament was repealed and a temporary Conventicle Act for three years passed declaring a conventicle to be any meeting for religious worship, at which five persons more than the members of a household were present, and subjecting every person above sixteen years of age present at a conventicle to imprisonment or fine for the first offence, to an increased imprisonment or fine for the second offence, and to transportation for the third offence, on conviction by a jury. The following year (1665) the parliament having met at Oxford the Five Mile Act was passed imposing on nonconformist ministers an oath promising passive obedience and non-resistance, and all who refused to take this oath were prohibited from coming within five miles of any corporate town, or of any place where they had formerly ministered; it prohibited them also from keeping schools or taking boarders.

In 1667 the sale of Dunkirk to the Dutch, and the treaty of peace with that nation caused the downfall of Clarendon, who retired to France. The ministry of Clarendon was succeeded by that of Clifford, Arlington, Buckingham, Ashley, and Lauderdale, which from the initials of their names obtained the name of the Cabal administration.

In 1670 occurred the famous treaty between Louis XIV. of France and Charles to attack Holland and Spain, and partition the possessions of those countries between them; and there can be no question that there was an implied agreement that Charles was to restore the Roman Catholic religion in England, on the overthrow of Spain. This year is also memorable for

Bushell's case. Bushell was one of the jurymen who had been fined by the Recorder of London for having acquitted Penn and Mead, who were indicted for an unlawful assembly. Having refused to pay the fine Bushell was committed to prison, but sued out a writ of *habeas corpus*, and on a return made to the writ, the judges held the ground insufficient. This is the last instance of the imposition of a fine on jurymen for their verdict. The former Conventicle Act having expired another one was next passed fining every person above sixteen present at a conventicle five shillings for the first offence, and ten shillings for the second; and if too poor to pay the fine, it was to be levied *on any other offenders present!*

In 1673 the famous Test Act was passed requiring every person holding office to take the oaths of allegiance and supremacy, sign a declaration against transubstantiation, and partake of the sacrament of the Lord's supper according to the usages of the church of England. This act was levelled at the papists, but affected a large number of protestants. In 1677 the marriage of the Princess Mary to the Prince of Orange took place. The following year (1678) occurred the popish plot in which a man named Titus Oates was the principal witness. The alarm caused by the alleged plot was extraordinary. Numbers of persons were arrested on suspicion and punished. The next important occurrence in this reign was the impeachment of the Earl of Danby. He had proffered to Louis the king's good offices in procuring such a peace as might be advantageous to France in consideration of Louis paying to Charles the sum of 6,000,000 of livres annually, for three years. Danby did not deny having written the letter, which had a postscript in these words, "This letter was written by my order, C.R." The Commons refused to allow the royal command to be any justification of the minister, and proceeded with their impeachment, but Charles having determined to protect his minister, in January, 1679, dissolved the parliament which had sat since 1661. A new parliament was

summoned, but, like its predecessor, was resolute in its determination to impeach Danby. On the renewal of the proceedings Danby accordingly at once pleaded the royal pardon in bar, which gave rise to important discussions on the question whether such a document was a defence to an impeachment. Danby was committed to the Tower but was subsequently released. A bill to exclude the Duke of York from the throne was shortly afterwards passed by the Commons, and to quell their refractory spirit Charles first prorogued and then dissolved the parliament. To this parliament we are however indebted for the celebrated Habeas Corpus Act, passed in 1679. By this act, on application in writing, the Lord Chancellor, or any of the twelve judges, is obliged to grant a writ, by which the gaoler is directed to produce in court the body of the prisoner, and to certify the cause of his detention and imprisonment; the practice of sending persons to prisons beyond seas was forbidden under severe penalties; and it was directed that every prisoner must be indicted the first term after his commitment and brought to trial in the subsequent term. This act was intended to amend a prior act, the 16 Car. I, c. 10, which enacted that any person committed by the king himself, or his privy council, or any members thereof, should have the writ of Habeas Corpus granted to him, upon demand or motion made to the Court of King's Bench or Common Pleas, which should thereupon, within three court days after the return of the writ, examine and determine the legality of the commitment, and do justice in delivering, bailing, or remanding the prisoner.

The remainder of this reign is chiefly remarkable for state trials. In 1683, College, a London joiner, distinguished for his zeal against popery, and who had been in Oxford armed during the sitting of parliament, was tried. He was indicted for being concerned in a conspiracy, and, although the witnesses were unworthy of credit, from having given evidence against the Catholics, the jury found him guilty; and the verdict was received by the inhuman spectators with applause.

Lord Russell was condemned and executed although there was no evidence of treason, while the witnesses were clearly shown by him to be utterly unworthy of credit. In Algernon Sidney's case the protection afforded by the statute of Edward III., in the requisition of two witnesses in cases of high treason, was disregarded, as only one witness was called to prove the facts alleged to constitute treason.

Sir Thomas Armstrong's case was also a memorable instance of injustice. "Having been outlawed for treason, he had fled to Holland, but was delivered up by the States, and although an outlawry in cases of treason is equivalent to conviction, the law allows a year for the party to surrender and take his trial. When before the Court, Armstrong demanded a trial, and although entitled to it, Jeffery treated his claim as unfounded, and he was executed without trial."—*Hallam's Const. History*.

Charles died in 1685, and was succeeded by his brother JAMES II. This monarch ascended the throne under unfavourable auspices. Strenuous but unsuccessful attempts in parliament had been made to exclude him from the throne, on account of his predilections for popery. For a time, however, after his accession to the throne James did not manifest any intention to alter the position of the papists. The rebellion headed by the Duke of Monmouth in the West of England, and the defeat of the insurgents were the first memorable occurrences in this reign. Monmouth was taken and executed. Many of his deluded followers shared the same fate, while still more were transported. The trials of the rebels were disgracefully conducted by Jeffreys, who seems on these occasions to have forgotten every principle of justice. These proceedings everywhere excited general indignation which was greatly increased by the attempts of James to exalt the papists into power and favour. The employment of Catholic officers for the army was the first manifestation of the king's intentions. Several of James's ministers who were Protestants were next dismissed and their places

supplied by Catholics. The parliament was shortly afterwards prorogued, and James then endeavoured to establish diplomatic relations with Rome. The pope, Innocent XI., however, premtorily refused to accede to the king's proposal. A declaration of liberty of conscience was next proclaimed, and James's designs now became manifest to all.

An ecclesiastical commission was next established, with jurisdiction over the Church of England, notwithstanding its illegality according to the Act for the abolition of the Court of High Commission of Charles the First. With the universities of Oxford and Cambridge, James shortly afterwards came into collision, from his attempts to force those bodies to appoint papists to vacant university offices. As at Oxford, the doctrine of passive obedience in subjects was far from unpopular, the king did not experience any difficulty in appointing a Roman Catholic as dean of Christ Church. At Cambridge however, the authorities made a vigorous resistance to the royal request, to admit a Roman Catholic to a degree, and the vice-chancellor having peremptorily refused to do so, was deprived of his office. The university however after this occurrence did not show a more submissive spirit than before, and James and the university came to a compromise on the subject. The office of president of Magdalene College, Oxford, having become vacant, James next requested the fellows to elect a Roman Catholic he named for the post, but instead of doing so they appointed a gentleman of their own selection to the office. A visitation of the college then took place, and all the fellows with the exception of two were deprived of their offices. These proceedings everywhere excited a feeling of indignation against the king.

James still persevered in his distasteful policy, and from some of the measures which he adopted in Ireland there can be no doubt that he intended to establish in that country the Roman Catholic religion. James could not but have been sensible of the aversion of the

nation to his projects, but with that infatuation which was characteristic of the Stuarts, he adopted a still more distasteful proceeding, by requiring a second declaration of indulgence to be read in all the churches and chapels throughout the country. At a meeting of the London clergy, a resolution was adopted not to read the declaration. The resolution was then transmitted to Lambeth palace to their metropolitan. A meeting of the prelates then took place, and a petition to the king was prepared by the archbishop and six bishops. The document was delivered the same night to the king, but when James learned its purport he was highly displeased. The bishops however were firm in their determination to support their clergy in their resolution, not to read the declaration of indulgence. The day for reading the declaration arrived, but so far from complying with the injunction, the clergy almost to a man refused to read the declaration.

Shortly afterwards the king and his council determined to take proceedings against the bishops for a seditious libel. The prelates were then taken into custody and committed to the Tower, amid the universal sympathy of the nation. In due course the trial came on, and in June, 1688, the cause was heard before the Court of King's Bench. The trial was ably conducted on the part of the counsel for the defendants, and although considerable difficulty was experienced by the counsel for the crown, in proving the publication of the libel, they ultimately managed to do so, and the cause was then summed up by the judge to the jury. The jury then retired to deliberate and continued out all night. At the re-opening of the court on the following morning, the jury returned and gave a verdict of Not Guilty. The verdict gave satisfaction to every body but the king. James was then encamped with his troops at Hounslow, and on hearing the shouts of the soldiers, enquired what they meant. On learning that they were rejoicing at the acquittal of the bishops, the king uttered the threat "So much the worse for them!" These proceedings greatly

increased the unpopularity of the king, and as the birth of the Prince of Wales shortly before the trial had put an end to the prospect of a Protestant successor in the Princess of Mary, who had married William of Orange, all parties concurred in the desirability of taking immediate steps to obtain a change of monarch. For this purpose advances were made to William of Orange by several leading personages in the kingdom. That prince however refused to interfere until he had received a written document signed by seven leaders of the principal parties in the state. Preparations for an invasion of England were then made on an extensive scale. James at first discredited the report of an invasion, but at length became sensible of the state of affairs, and in the hope of regaining his popularity made several important concessions. "But," as has been well observed by Macaulay, "gratitude is not to be expected by rulers who give to fear what they had refused to justice." On the 5th of November, William and his troops landed at Torbay, but for several days the prince did not meet with much support. On the other hand, James had a numerous army stationed at Salisbury, but instead of at once attacking William's forces he foolishly adopted the advice of a council of war, and retreated towards London. Those who secretly supported William now lost no time in joining his standard. Every day increased the number of William's adherents, and even the Prince George and his wife the Princess Anne went over to his side. Negotiations were then entered into between the king and William, but as they led to no satisfactory result, James sent the queen and the young prince to France, during the night of the 9th of December, and made arrangements for following them shortly afterwards. At one in the morning of the 11th, James accordingly quietly left Whitehall, and getting into a small boat, threw the great seal into the middle of the river and landed at Vauxhall. He then proceeded to Feversham and went on board a vessel, but having been discovered was brought back to Whitehall. The same night



William sent some troops to occupy Whitehall, which James two days afterwards in obedience to a requisition from William quitted for Rochester. The same day William entered London with a large army, and took up his abode at St. James's. From Rochester James was allowed to escape to France.

A convention parliament was now summoned for the 22nd of January, and in the meantime William adopted several conciliatory measures. The convention parliament having met, a resolution was on the 28th of January, adopted by the Commons, "That king James II. having endeavoured to subvert the constitution by breaking the original contract between king and people, and by the advice of Jesuits and other wicked persons having violated the fundamental laws, and withdrawn himself out of the kingdom, had abdicated the government, and that the throne is hereby vacant." On the following day another resolution was adopted by the Commons, "That it hath been found by experience to be inconsistent with the security and welfare of this kingdom to be governed by a popish prince." To the latter resolution the House of Lords gave its unanimous consent, but the former caused animated discussions in a conference of the two Houses. The peers at length adopted the views of the Commons. The next important proceeding was the adoption of an additional resolution settling the crown on the Prince and Princess of Orange during their joint lives, and that of the survivor, but that the regal functions were to be exercised alone by William, during his life, and after their decease the crown was limited to Mary's issue, and in default of such issue, to the Princess Anne of Denmark and her issue. While thus making a transfer of the crown, the leaders of the nation were not unmindful of its liberties. A statement on this subject was accordingly prepared by the Lords and Commons, and called the Declaration of Rights. The document after reciting the misdeeds of James II., and his abdication of the throne, declared the pretended regal power of suspending or of dispensing with laws, or the execution of laws without

consent of parliament, the commission for erecting the late court of commissioners for ecclesiastical causes, the levying of money for or to the use of the crown, by pretence of prerogative, without grant of parliament, to be all illegal; asserted the right of subjects to petition the king; protested against the raising or keeping of a standing army within the kingdom, in time of peace without consent of parliament; enabled subjects who are Protestants to have arms for their defence suitable to their conditions and as allowed by law; asserted freedom of election and of speech for members of parliament; prohibited excessive bail or fines, or the infliction of cruel and unusual punishments; declared that jurors ought to be duly impanelled and returned, and in trials for high treason ought to be freeholders; that all grants and promises of fines and forfeitures of particular persons before conviction are illegal; and that parliaments ought to be held frequently. This declaration was read in the presence of William and Mary, seated on the throne, on the 13th of February, 1689. On that day they became and were declared king and queen.

An act was next passed declaring the convention parliament to have been properly constituted. New forms of oaths of supremacy and allegiance were at the same time prepared, and were required to be taken by all persons holding ecclesiastical, civil, and military appointments. On the 11th of April, 1689, William and Mary were solemnly crowned at Westminster. Shortly afterwards the repeal took place of the penal laws against Protestant dissenters, who believing the doctrine of the Trinity, should keep the doors of their assemblies open, take the oaths to government, and subscribe a required declaration. William would even have relaxed the laws against the papists, but party spirit was too strong for him. The settlement of the revenue and its appropriation to specific purposes then took place. From this period the appropriation of the revenue has been uniformly practised. Even in the reign of Charles II. this right had been exercised

The next occurrence of importance was the declaration of war against France, greatly to William's satisfaction, whose policy as a monarch from first to last, was to secure the liberties of Europe, by preserving the balance of power.

William's attention was shortly afterwards called to the affairs of Ireland, for on the 22nd of March, James landed at Kinsale, with a number of troops he had brought with him from France, in a fleet supplied by Louis XIV. The Irish, with few exceptions, supported the cause of James, and as the Lord Lieutenant had also gone over to his side, James was soon surrounded by a considerable army. In the north of Ireland, however, James met with considerable opposition. The inhabitants of Londonderry were among the first to defend their town. On the 20th of April, James laid siege to the town, which was vigorously defended. The siege lasted several months, but all James's efforts were ineffectual. His general, Rosene was equally unsuccessful in his efforts to take the town. Dreadful privations were endured by the besieged, and pressed by hunger they would have been obliged to succumb to the besiegers, had not two ships laden with provisions managed to force a passage up the river to the town. The besiegers in disgust desisted from the attack. In other parts of Ireland however, the Protestants experienced nothing but cruelty and oppression. At length towards the end of the year, a large army under the command of the Duke of Schomberg was sent over into Ireland by William. Belfast was abandoned by the army, and Carrickfergus, after a short siege, capitulated. In other respects however, the prospects of James were far from gloomy.

The second session of the English parliament was opened on the 19th October, 1689. In this session the Bill of Rights, embodying the Declaration of Rights was passed with the important provision, that all persons who shall hold communion with the church of Rome, or shall marry a papist, shall be for ever excluded from the crown and government of this realm,

and in all such cases the people of these realms shall be absolved from their allegiance, and the crown shall descend to the next heir. Party spirit caused several warm debates in parliament, the war in Ireland did not progress as William would have liked, and at the close of the session the king accordingly determined to finish the war in person. Setting out in June, 1660, William landed at Carrickfergus. Shortly afterwards the famous battle of the Boyne was fought between the armies of William and James, when the latter sustained a signal defeat. James retired to Dublin, and then to Waterford, where he embarked for France. William shortly afterwards returned to England. After some considerable reverses the royal forces at length reduced Ireland to subjection, at the beginning of 1691.

In 1694 the Triennial Act was passed, by which, after the expiration of three years, reckoning from the return of the first summons, parliaments were to have no longer continuance. At the close of this year, William had the misfortune to lose his queen, from small-pox. The following year (1695), a great constitutional boon was conferred upon the nation by the enactment of the statute relating to high treason, declaring that both of the witnesses required by law in these cases must be to the same overt act, or one to one overt act, and the other to another overt act of the same species of treason, and not of distinct heads or kinds; and no evidence shall be admitted to prove any overt act not expressly laid in the indictment. The act also enabled the accused to be defended by counsel, and provided that a copy of the indictment and the names of the witnesses should be furnished to the accused. Notwithstanding this invaluable act, Sir John Fenwick was, the next year (1696), attainted of high treason on the evidence of one witness, and executed. The bill of attainder caused warm debates in the house, but was carried by a large majority. This course was adopted in consequence of one of the two witnesses who had given evidence before the grand

jury having been induced, by Fenwick's relatives, to abscond before the trial.

In September, 1697, by the treaty of Ryswick, peace was concluded with France, after the war had lasted nine years, and been conducted with varied fortunes. Faction and party spirit were the principal characteristics of the remainder of William's reign. However, in 1700, the Act of settlement was passed, providing that whoever shall hereafter come to the possession of this crown, shall join in communion with the church of England, as by law established; that in case the crown and imperial dignity of this realm shall hereafter come to any person, not being a native of this kingdom of England, this nation shall not be obliged to engage in any war for the defence of any dominion or territories which do not belong to the crown of England, after the further limitation by this act shall take effect; that no person born out of the dominions of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made denizen) except such as are born of English parents, shall be capable to be of the privy council or a member of either house of parliament, or to enjoy any office or place of trust either civil or military, or to have any grant of lands or tenements, or hereditaments from the crown to himself, or to any other or others in trust for him, and that after such further limitation shall take effect, judges' commissions shall be made *quamdiu se bene gesserint*, and their salaries ascertained and established, but upon the address of both houses of parliament, it may be lawful to remove them. The further limitation of the crown contained in this act, was after the death of William and of the Princess Anne of Denmark, and in default of their respective issue to the Princess Sophia, and the heirs of her body *being Protestants*. The act also contains three clauses, which, by subsequent acts, have been repealed. These were, that no person who shall hereafter come to the possession of this crown shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament;

that from and after the time such further limitation shall take effect, all matters and things relating to the well governing of this kingdom, which are properly cognizable in the privy council, by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon, shall be signed by such of the privy council as shall advise and consent to the same; and that no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons.

In March, 1702, William died. He was a great politician, possessed considerable abilities as a soldier, and was extremely tolerant in regard to religious opinions. His manners being however phlegmatic, and his disposition reserved, he was far from popular, but considering the difficulties he had to encounter, both at home and abroad, there can be no question that William was one of the greatest monarchs that ever sat on the British throne. In this reign, commerce made great advances, from the establishment of the Bank of England, and the late East India Company, and our constitutional rights were extended and settled.

On the death of William, ANNE ascended the throne. Soon after her accession war was declared against France by the allied powers of England, Germany, and Holland. On land the Duke of Marlborough gained great renown by his military talents and splendid victories, while on sea the exploits of our naval commanders were no less distinguished, of which we have a memorable instance in the capture of Gibraltar in 1704 by a small force of marines and sailors.

The attempts to effect a union between England and Scotland, at the commencement of this reign, were unsuccessful, but at length, in 1707, this desirable object was accomplished. Twenty-five articles of union were agreed to by the parliaments of both nations, declaring that the two kingdoms should on and after the 1st of May, 1707, be united into one kingdom by the name of

Great Britain; that the succession to the monarchy of Great Britain should be the same as was before settled with regard to that of England; that the United Kingdom should be represented by one parliament; that there should be a communication of all rights and privileges between the subjects of both kingdoms except where it was otherwise agreed; that when England raised £2,000,000 by a land tax, Scotland should raise £48,000; that the standards of the coin, of weights, and of measures, should be reduced to those of England, throughout the United Kingdoms; that the laws relating to trade, customs, and the excise, should be the same in Scotland as in England; that sixteen peers should be chosen to represent the peerage of Scotland in parliament and forty-five members (since increased) to sit in the House of Commons; that the sixteen representative peers of Scotland should have all privileges of parliament; and that all peers of Scotland should be peers of Great Britain, and rank next after those of the same degree at the time of the union, and should have all privileges of peers except sitting in the House of Lords and voting on the trial of a peer. These are the principal of the articles of the union which were confirmed by the statute 5 Anne, c. 8, which also ratifies two acts there recited for the preservation of the two churches of England and Scotland in the same state that they were in at the time of the union, and the maintenance of the acts of uniformity which establishes our common prayer, and declares that these two recited acts shall for ever be observed as fundamental and essential conditions of the union.

Another important legislative measure was the enactment of the place bill. By it all persons holding pensions from the crown, during pleasure, were made incapable of sitting in the House of Commons, and the same disability was made applicable to any person holding any office under the crown created since October, 1705, (except an officer in the army or navy accepting a new commission) but any member who should accept any office of profit existing prior to that

date, though thereby vacating his seat, was declared capable of being re-elected.

In this reign party spirit between whigs and tories ran very high. With the latter the doctrines of the divine right of kings and passive obedience in subjects, were far from unpopular. A clergyman, of the name of Dr. Sacheverel, in 1709, who held these doctrines, while preaching a sermon before the Lord Mayor of London, took occasion to attack the principles of the revolution by defending the doctrine of non-resistance, and inveighed against the toleration and dissenters. The sermon was soon afterwards published, when it was brought under the notice of the Commons by whom it was voted a scandalous and malicious libel. Articles of impeachment, in the name of the Commons, were then exhibited in the House of Lords against Sacheverel for high crimes and misdemeanors. On the trial of the impeachment the case was ably conducted on both sides. The queen was known to support the tories, and every day while the impeachment lasted Sacheverel was attended on the way to his trial by crowds of sympathisers. However, there could be no question but that the language Sacheverel had employed was perfectly unjustifiable, and this view being adopted by a majority of the peers he was condemned to be suspended for three years, and to have his sermon burnt by the common hangman. The trial is remarkable as establishing the principles which had been acted on at the revolution, and for the memorable resolution of the Commons, that in impeachments they should proceed according to the laws of the land and the law and usage of parliament.

During the progress of the trial several meeting houses were demolished. For their participation in this proceeding, two men named Dammaree and Purchase, were indicted for high treason in levying war in the kingdom with the intention to demolish all meeting houses in general, and found guilty, but were reprieved. The doctrine that a rising of a number of persons with an avowed intention to demolish all



enclosures, meeting houses, or other object of their resentment, as far as the parties are able, constitutes high treason, was however upheld by all the judges. Several legal writers have disapproved of this doctrine, and probably it would not be regarded as law at the present day, unless such acts of violence as we have mentioned were accompanied by circumstances of warlike array. Some observations of Sir M. Hale would even lead to the inference that such acts ought to be regarded as riots, and no higher offences.

In 1710 was passed the 8 Anne, c. 19, which is the first statute relating to literary property, and has since been the model of all succeeding copyright acts. In March, 1713, peace was concluded between France and Britain by the famous treaty of Utrecht. In July of the following year Anne died, and with her ended the line of the Stuarts.

Anne was succeeded by GEORGE I., the elector of Hanover, his mother, the Princess Sophia, having died not long before Anne. The late monarch had been a supporter of the tory party, but, soon after his accession, George, showed that his predilections were with the whigs. Among the first measures of the legislature was the repeal in the clause in the Act of Settlement restraining the sovereign from going out of the United Kingdom without the consent of parliament.

In March, 1715, a new parliament assembled, and the predominance of the whig party became at once perceptible. Against the leaders of the tory party the resentment of the whigs knew no bounds, and the Duke of Ormond and Lord Bolingbroke, having fled to France to escape its effects, were attainted. The rebellion in Scotland, shortly afterwards, attracted the attention of the government, and although the pretender was well supported, both in Scotland and the north of England, his forces were in a short time thoroughly defeated, and at the beginning of 1715 he returned to France.

The following year (1716) the Triennial Act was repealed, and the duration of parliament enlarged to

seven years, unless a dissolution should sooner occur. There can be little doubt that at this period the spirit of rebellion was not wholly quelled, notwithstanding the severities with which the rebels had been treated, and as a feeling of dissatisfaction with the ministry had become manifest, the apprehension of danger from a renewal of the rebellion, as well as the fear of being supplanted by others in the administration of the affairs of the nation, together led to the enactment of this measure. The arguments in favour of the bill were that triennial elections served to keep up party divisions; to raise and foment feuds in private families; to produce ruinous expenses, and give occasion to the cabals and intrigues of foreign princes; and that the spirit of rebellion was still prevalent. Against the bill the main arguments were that frequent parliaments were required by the fundamental constitution of the kingdom; that the bill far from preventing the expense of elections would rather increase it; and that a long parliament would yield a greater temptation, as well as a better opportunity, to a vicious ministry to corrupt the members than they could possibly have when the parliaments were short and frequent.

The peerage bill of Lord Sunderland, introduced at this period also requires notice. This measure proposed, after the creation of six more peers, to limit the number of that body to its actual state, and to substitute a fixed number of hereditary, instead of elective peers for Scotland. The bill passed the upper House, but was rejected by the Commons.

Towards the close of this reign, Atterbury, bishop of Rochester, became implicated in a conspiracy for an invasion of this country from Spain. A bill of pains and penalties was passed, depriving the prelate of his see, and banishing him from the kingdom for life. In 1727, George died, after a reign of thirteen years.

George I. was succeeded by his son GEORGE II. In 1733, Sir Robert Walpole's Excise Scheme was intro-

duced. This bill was the precursor of the present useful system of bonding goods subject to custom duties, but meeting with violent opposition, both in and out of parliament, it was withdrawn by the ministry.

In 1736, an act was passed to prevent the improvident alienation of lands, for charitable purposes. It is commonly, though improperly called the Mortmain Act. In 1745, Charles Edward Stuart, the son of the old pretender, who had failed in his efforts, in 1715, to gain the British throne, landed in Scotland. For a time, the young pretender met with great success, and advanced as far as Derby, but at the battle of Culloden, in April, 1746, he sustained a signal defeat, and after many hair breadth escapes from his pursuers, managed to embark in a French privateer, lying off the coast, and arrived safely in France.

In 1756 Admiral Byng was executed for failing to go into action with a French fleet of nearly equal force to his own, when sent to relieve Minorca, which was then menaced and afterwards captured by the French. As his conduct was the effect of an error of judgment rather than of cowardice, his punishment must be regarded as an act of unjustifiable severity. There can be no question however that the severe sentence on Byng was intended to satisfy the resentment of the nation at the loss of Minorca, and which, whether rightly or wrongly, was imputed to the unfortunate admiral.

On the 25th October, 1760, the king died, after a reign of thirty-three years.

George II. was succeeded on the throne by his grandson GEORGE III.

Among the first legislative measures, after the accession of George III., was an act providing that the offices of the judges should not be vacated on the demise of the crown.

In 1763, Wilkes, the member for Aylesbury, published, in "The North Briton," an offensive libel on the king. The Secretary of State, following an old custom, at once issued a general warrant (without naming any

persons in particular) to apprehend the authors, printers, and publishers of the publication in which the libel had appeared. Under this warrant Wilkes, and numerous other persons, were taken into custody. Actions were shortly afterwards commenced by Wilkes and some others of the persons who had been arrested, when the warrant was decided to be illegal, and heavy damages were recovered against the messengers and other persons concerned in these illegal arrests.

In 1792, Mr. Fox's Libel Act, the 32 Geo. III., c. 6C, and styled by Macaulay, "the inestimable law which places the liberty of the press under the protection of juries," was passed. By this statute, after reciting that doubts had arisen whether on the trial of an indictment or information for the making or publishing of a libel, where an issue or issues are joined between the king and the defendant or defendants, on the plea of Not Guilty pleaded, it be competent to the jury impanelled to try the same, to give their verdict upon the whole matter put in issue, it is (by sec. 1) declared and enacted that on every such trial, the jury sworn to try the issue may give a general verdict of not guilty upon the whole matter put in issue, upon such indictment or information, and shall not be required or directed by the court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information. On the 1st January 1801, the Union with Ireland commenced. By the Act of Union, the 39 and 40 Geo. III., c. 67, "the kingdoms of Great Britain and Ireland, on that date and for ever after, became one kingdom by the name of the United Kingdom of Great Britain and Ireland; the succession to the imperial crown was continued in the same manner as that to the crown of Great Britain and Ireland stood before limited; one parliament, styled the parliament of the United Kingdom of Great Britain and Ireland, was established; provision

was made that the Lords spiritual of Ireland, by rotation of sessions, and twenty-eight Lords temporal of Ireland, elected for life by the peers of Ireland should sit in the House of Lords, and one hundred commoners (increased by a later act to one hundred and five) should be the number to sit in the House of Commons on the part of Ireland; that a peer of Ireland not elected one of the twenty-eight may sit in the House of Commons, but while so sitting shall not be entitled to privilege of peerage, or to be elected one of the twenty-eight, or to vote at such election; and that all the lords spiritual and temporal of Ireland (except those temporal peers who may be members of the House of Commons) should have all privilege of sitting in the House of Lords (with its attendant privileges) only excepted; the churches of England and Ireland were united into one Protestant episcopal church, called the United Church of England and Ireland, with the same doctrine, worship, and discipline; and the continuance and preservation of the united church as the established church of England and Ireland was declared an essential and fundamental part of the union; and that in like manner the church of Scotland should remain the same as established by the acts of Union of England and Scotland; the subjects of Great Britain and Ireland were declared entitled to the same privileges with regard to trade and navigation, and also in respect of all treaties with foreign powers; the future expenditure of the united kingdom should be defrayed in such proportion as parliament should from time to time deem reasonable, according to certain rules prescribed for that purpose in the act; all the laws and courts of each kingdom should remain the same as already established, subject to such alterations by the united parliament as circumstances may require, but that all writs of error and appeal which might then have been decided in the House of Lords of either kingdom, should be decided by the House of Lords of the United Kingdom."—*Stephen's Commentaries*.

On the 29th of January, 1820, after a reign of longer

duration than that of any previous monarch of this realm, George III. died.

George III was succeeded by his son GEORGE IV. This reign is chiefly remarkable for the Catholic Emancipation Act, by which Roman Catholics are admitted upon taking and subscribing an oath prescribed by the Act (which comprises among other things, the abjuration of any intention to subvert the church establishment, and an oath never to exercise any privilege to disturb or weaken the Protestant religion or Protestant government) to both Houses of Parliament, to all corporate offices, and to vote at parliamentary elections. They are also qualified upon taking and subscribing the same oath (which is to stand in place of all other tests whatever) to exercise any franchise or civil right except that of presenting to benefices; and to hold any office with the exception of the following : the office of guardian, justice, or regent of the United Kingdom ; of lord high chancellor, or commissioner, or keeper of the great seal ; of lord lieutenant, deputy or chief governor of Ireland ; of high commissioner of the general assembly of Scotland ; or any office in the church, or in the ecclesiastical courts, or in the universities, colleges, or public schools.

George IV. died in June, 1830, and was succeeded by his brother WILLIAM IV. In 1832, the Reform Act was passed. "In counties, the only franchise then existing was the freehold one in fee, and for life. This was retained, with superadded conditions and limitations respecting value, occupation, and possession, for a specified length of time. To the freehold voters, however, were added *copyholders* of all kinds ; *leaseholders*, sub-lessees, and assignees ; and *occupying tenants* at a yearly rental of £50. In boroughs the ancient household franchise, and other corporation rights of voters, were retained, some for a time, and a few others in perpetuity. But the grand distinguishing feature of the whole scheme was the introduction of what is called the ten pound franchise ; that is, the occupation of a house and premises of the annual value

of ten pounds, for twelve months, with conditions as to residence and rating, aimed at securing an adequate degree of respectability and responsibility; while the receipt of parish relief within a year was to disentitle all borough electors to the franchise, for the time being."—*Warren's Abridgement of Blackstone*.

In 1837 William died, and was succeeded by VICTORIA, the daughter of the Duke of Kent, the fourth son of George III. At the commencement of her reign the Wills Act was passed, and by it the power of making a will disposing of the whole of his property, not entailed, was first given to an English subject. Previously to this act a testator had no power of devising contingent, executory, and future interests, and rights of entry, nor (according to some legal authorities) customary freeholds.

In 1843 was passed Lord Campbell's Act, relating to Libels, containing several provisions for more effectually securing the liberty of the press. Sec. 1 enacts, that in any action for defamation, it shall be lawful for the defendant (after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the plea in such action) to give in evidence, in mitigation of damages, that he made or offered, an apology to the plaintiff for such defamation, before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced, before there was an opportunity of making or offering such apology.

Sec. 2 enacts, that in an action for libel contained in any public newspaper, or other periodical publication, it shall be competent to the defendant to plead that such libel was inserted in such newspaper without actual malice, and without gross negligence; and that before the commencement of such action, or at the earliest opportunity afterwards he inserted in such newspaper, or other periodical publication, a full apology for the said libel, or if the newspaper or periodical publication in which the said libel appeared

should be ordinarily published at intervals, exceeding one week, had offered to publish the said apology in any newspaper or periodical publication, to be selected by the plaintiff, in such action; and that every such defendant shall, upon filing such plea, be at liberty to pay into court a sum of money, by way of amends for the injury sustained by the publication of such libel.

Sec. 6 enacts, that on the trial of any Indictment or Information for a Defamatory Libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published; and that to entitle the defendant to give evidence of the truth of such matter charged, as a defence to such indictment or information, it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged, in the manner now required in pleading a justification to an action for defamation, and further, to allege that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply, generally denying the whole thereof; and that, if after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or disprove the same.

Sec. 7 enacts, that whenever upon the Trial of any Indictment or Information for the Publication of a Libel, under the plea of not guilty, evidence shall have been given, which shall establish a presumptive case of publication against the defendant, by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or



knowledge, and that the said publication did not arise from want of due care or caution on his part.

In 1846, the repeal of the Corn Laws took place, and the era of free trade commenced. In 1861, the Criminal Law Consolidation Acts were passed. Numerous obsolete statutes have been repealed, and a revised set of statutes promised. The good work of law reform still proceeds, but much remains to be done ere the system of law or of procedure in this country will be attractive to the jurist for its simplicity.

## BOOKS OF REFERENCE ON CONSTITUTIONAL LAW & LEGAL HISTORY.

Belsham's History.

Blackstone's Commentaries, by Kerr.

Brougham's Political Philosophy, Chaps. 26, 27, 28,  
29, vol. 3.

Burnett's History of His own Times.

Clarendon's History of the Rebellion.

Coke upon Littleton, by Butler and Hargreave. The  
notes.

Creasy on the Constitution.

Fleury's *Droit Ecclesiastique*, or any other History of  
the Canon Law.

Foster on the Crown Law. The Chapter on Treason.

Gilbert on Uses, by Lord St. Leonards. The preface.

Hallam's History of the Middle Ages. Chap. 10.

——— Constitutional History.

Hume's History, 8th edition, vol. 3. The close of the  
23rd chapter, p. 296, beginning at the passage:  
"Thus far have we pursued the History of England."

Mably. *Droit Public de l' Europe*.

Macaulay's History of England.

Mackintosh, Sir James. The fragment.

May's History of Parliament.

Millar on the Constitution.

Millar's History.

Rapin's History.

Reeve's History of the English Law.

State Trials. The preface.

——— ——— vol. 2.

Statutes at Large.

Temple's (Sir W.) Letters and Memoirs.

Tindal's Continuation of Rapin's History.

Vaughan's Reports, p. 135.

## QUESTIONS ON CONSTITUTIONAL LAW AND LEGAL HISTORY.

### *Henry II.*

Q.—What was the constitution of England in the time of Henry II.? *Roll. 1154-1189*

Q.—What was the policy and character of Henry II.? *Same 117*

Q.—In what did his dispute with Beckett originate? Give an account of its progress. State your opinion of the motives of Beckett, and the merits of the contest. *1170*

Q.—By whom was the "Assiza" first substituted for trial by Battle? *1179*

Q.—Mention the name of any man conspicuous in our history, who refused obedience to the Constitutions of Clarendon. *Becket*

Q.—What French kings were cotemporary with Henry II.? *Louis 7 1135-1180 Richard 1 1189-1199*

Q.—What was the date and purport of the Constitutions of Clarendon? *Same in Roll 1171*

Q.—What were the original functions of juries, and at what time and how did they become what they now are? *Same 1171*

### *John.*

Q.—Is there any clause in the Great Charter, which shows that commercial relations were increasing among us?

Q.—What limits were fixed to the fines imposed on Freemen in the Great Charter. *in Roll 1215*

Q.—Mention any instances in which this provision was disregarded.

Q.—Can you give any proof that it was necessary for the king to take the advice of parliament, from Magna Charta?

Q.—When were justices of Assize first instituted?

Q.—Give an account of the events which led to the signing of Magna Charta.

Q.—What was the most remarkable provision of Magna Charta?

Q.—What decisive battle was fought on the Continent during the reign of John, and what was its effect on our domestic institutions?

Q.—Who was pope when Magna Charta was signed? What was his character? How far did he succeed in his undertakings?

Q.—Who were the members of the Great Council from the Conquest to Magna Charta?

Q.—What distinctions as to the great barons, and the less powerful tenants, holding immediately of the crown, do you find in the Magna Charta?

Q.—How can a freeman be lawfully punished according to Magna Charta? and what interpretation do you give to the expressions limiting the mode of punishment?

Q.—State any instances from our history in which this clause has been violated.

Q.—If the king order Titius to arrest Caius, and the arrest cannot be justified, has Caius a right of action against Titius?

Q.—When and by whom was the rule on this subject made?

Q.—At what period of our history is the right of every person detained in prison to a trial, a clear principle of our constitution?

Q.—To whom was England particularly indebted for the Great Charter?

Q.—What are the essential clauses of the Great Charter?

### *Henry III.*

Q.—What is Bracton's view of the prerogative?

Q.—In what state was the municipal law of England in the time of Henry III. ? Name the most remarkable treatises on legal subjects which had then appeared in England.

Q.—Have you any reason for supposing that in the reign of Henry III. the middle classes had acquired any influence ?

Q.—State the date you assign to the House of Commons, and your reason for fixing upon it.

Q.—What were the relations of England to the Continent under Henry II. and Henry III. ?

Q.—Give an account of Simon de Montfort, and his proceedings as they affected the Constitution.

Q.—What was the limit which the charter of Henry III. fixed to the amount of a fine ?

Q.—What French kings were contemporary with Henry III. ?

Q.—Of whom was the House of Lords composed in the reign of Henry III. ?

Q.—What was at that time essential to make a lord of parliament ?

### *Edward I.*

Q.—Give an account of the manner in which land was set free from the restraint imposed by the Statute De Donis.

Q.—When did deputies from cities and boroughs finally become an integral part of the legislature ?

Q.—To what statute do you assign the origin of Estates Tail ?

Q.—Give an account of the statute Quia Emptores.

Q.—When were the statutes De Donis and Quia Emptores enacted ?

Q.—What were the most important constitutional measures in the reign of Edward I. ?

### *Edward II.*

Q.—What were the Articuli Cleri ?

*Edward III.*

Q.—Had any means been taken in the reign of Edward III. to provide for the internal tranquility of the country?

Q.—What was the name and date of the peace concluded by Edward III. with France, after the battle of Poitiers?

Q.—Mention any proofs of the progress of the constitution in the reigns of Edward I. and Edward III.

Q.—What is the first instance of parliament giving a conditional assent to the demand of supply?

Q.—What were the acknowledged rights of the House of Commons in the time of Edward III.

*Richard II.*

Q.—Give an account of the changes of government under Richard II.?

36 Q.—Into what classes might society in England be divided at the beginning of his reign?

Q.—To what causes do you attribute the insurrection at the beginning of his reign?

Q.—Have you any reasons, and if you have state them, for supposing that the importance of the House of Commons increased during his reign?

Q.—What was the condition of the poorer classes at that time?

Q.—Had there been any insurrections of the lower classes in France, during the reign of Richard III., for repressing the encroachments and rapacity of ecclesiastics, and how had they been evaded?

Q.—How was the right to sit in the House of Lords conferred during the reigns of the Plantagenets?

Q.—Of whom did the king's ordinary council consist during the Plantagenet dynasty, and what was the business of it?

Q.—Name any instances of impeachment in the reign of Richard II.?

Q.—How were peers created at this period of our history?

Q.—What events important to our constitutional history, happened during the reign of Richard II.?

Q.—State the instances under the Plantagenet kings in which the privilege of parliament was asserted?

Q.—What was the general character of the government of the Plantagenets?

Q.—Mention excesses of the prerogative during that period?

Q.—What is the right to sit in the House of Commons conferred by a Writ of Summons? How does it differ from that conferred by Patent?

Q.—Can you quote the testimony of any English writer to the freedom of the English people before the reign of Henry VII.

Q.—What proof can you find in the time of Richard II. of the responsibility of ministers to the nation?

### *Henry IV.*

Q.—Mention any proof of the progress of our constitution in the reign of Henry IV.

Q.—What is the earliest authority in favour of the right of the House of Commons to originate money bills?

Q.—Give an account of the manner in which secular peerages were created at the accession of Henry IV.

Q.—State any proofs of the increasing authority of parliament, between the accession of Edward III. and the death of Henry IV.?

Q.—When was the separation of knights and burgesses from peers, in our legislature, complete?

### *Henry V.*

Q.—Mention the first remarkable instance of difference between the crown and parliament after the death of Henry IV.?

Q.—What were the original functions of juries, and

at what time, and how did they become what they now are?

Q.—What was the opinion of Sir John Fortescue as to the English constitution?

Q.—What causes can you assign why the freedom of the English was greater than that of other people?

Q.—What was the effect of the 8 Hen. VI., c. 7?

#### *Edward IV.*

Q.—Give an account of the manner in which land was set free from the restraint imposed by the statute *De Donis*?

Q.—When was the decision in *Taltarum's* case pronounced, what was its effect, and what statute tending to the same subject, passed in the reign of Henry VII.?

#### *Henry VII.*

Q.—How was Henry VII. connected with the House of Lancaster?

Q.—What character does Lord Bacon give of his legislation?

Q.—What act was passed affecting land during this reign?

Q.—Had any act similar in its tendency been passed before, and when?

Q.—Had any attempt been made by persons, not members of the legislature, to accomplish the purpose of those acts? Give an account of it, of the reign when it happened, and the manner in which it was carried on.

Q.—Give an account of the Earl of Warwick in the time of Henry VII., his relation to the crown, and his fate.

Q.—Who was the mother of Cardinal Pole, and what became of her?

Q.—State any circumstance from which you would infer the influence of the Roman and Canon Law in the legislation at the time of the accession of Henry VII.



Q.—Give an account of the Statute of Fines in the reign of Henry VII.

Q.—Trace the progress of the constitution from John to Henry VII.

Q.—What were the admitted rights of Englishmen on the accession of the Tudor dynasty to the throne?

Q.—What remarkable statute for the security of the subject was passed in the reign of Henry VII.?

Q.—On what occasion was that statute quoted and set aside?

### *Henry VIII.*

Q.—After the children of the queen of Henry VII., who was the nearest heir of the House of York in the reign of Henry VIII.?

Q.—Give an account of the attempted change in the mode of holding and enjoying landed property during the reign of Henry VIII.

Q.—What was the effect of this attempt? How far did it succeed? Why was it thought desirable? Can you recollect Lord Bacon's opinion or expressions on this subject?

Q.—How far did Henry VIII. carry on the Reformation?

Q.—What was the Law of the Six Articles?

Q.—State the insurrections in the time of Henry VIII., with their causes and results; and did the king give way?

Q.—Can you mention any nobleman tried for high treason, and acquitted in the time of Henry VIII.

Q.—What act of parliament in the time of Henry VIII. was most hostile to our freedom?

Q.—Give an account of Bills of Attainder. When were they first employed? Name some remarkable persons in the reign of Henry VIII. who were destroyed by means of them?

100 Q.—Give an account of the character of Cranmer.

Q.—Had any plan been devised for the Reformation of our Ecclesiastical Law?

Q.—Give an account of the Common Law, and state its influence on our own.

Q.—Give an account of the Statute of Uses, the causes which led to it, and the effect on the transfer of property which it produced.

Q.—State the encroachments on the liberties of the subject in the reign of Henry VIII.

Q.—What was the character of the parliaments of Henry VIII., and in what instances did they betray the trust reposed in them? State any instances in which Henry VIII. gave way to the demands of the people.

Q.—What power to dispose of his property by will had an English subject before the statute of Henry VIII.?

Q.—By what statute was that right affected afterwards, and in what manner?

Q.—For what offence were Sir Thomas More and Cardinal Fisher executed? What means was used to obtain evidence against Sir Thomas More?

### *Edward VI.*

Q.—State any act in Edward VI. or Mary's time from which you would infer the inference of the Roman and Canon Law on the legislation of those periods.

Q.—What were the changes introduced with respect to the law of the Six Articles under Edward VI.?

Q.—Name any sufferers for religious opinions in the time of Edward VI.

Q.—When were the canons of the English Church settled?

Q.—Did the House of Commons recover any portion of its influence in the reigns of Edward VI. and Mary. State the reasons for your opinion.

Q.—Mention any remarkable attainders in the reign of Edward VI., and give some account of them.

Q.—What security for the subject accused of treason was provided during the reign of Edward VI., and how was that security made unavailing?

Q.—Can writing be a proof of an overt act of treason?

Q.—Give an account of the doctrine of constructive treason, citing such cases which occur to you as illustrating it.

*Mary.*

Q.—Name any instance of persons acquitted on a charge of high treason during the reigns of the House of Tudor. What happened to the jury in such a case?

*Elizabeth.*

Q.—Give an account of the genius and constitution of the English Constitution on the accession of Queen Elizabeth.

Q.—Give an account of the principal religious sects into which England was divided during the reign of Elizabeth, and of the laws enacted to suppress dissent of any kind from the Established Church.

Q.—Did Elizabeth increase the number of the House of Commons?

Q.—How did her policy towards her parliaments differ from that of James and Charles I.

Q.—Mention any particular instance of the concessions of Elizabeth to her parliament.

Q.—What was the practice of our Courts of Justice under the reigns of the House of Tudor, with regard to the confronting of the witnesses with the prisoner?

Q.—Give an account of the English church under Henry VIII., Edward VI., Mary, and Elizabeth.

Q.—State the purport of the acts of parliament during those reigns, which (religious questions set apart) most strongly mark the social progress of England.

Q.—Could convocation fix the articles of the Church of England, without the assent of parliament?

Q.—In what were the securities of the subject defective, during the reign of Elizabeth?

Q.—When and how were these defects supplied?

Q.—What instances are there in the reign of Elizabeth, in which the privileges of the House of Commons were asserted?

Q.—What were the evils and abuses for which, during the reign of Elizabeth, the Commons especially sought redress?

Q.—What was the case of Udall?

Q.—What complaint was made by the judges in Elizabeth's time, with regard to encroachments on the liberty of the subject?

Q.—What was the policy pursued by Elizabeth in ecclesiastical matters?

Q.—What was the last writ authorizing a Borough to send members to parliament, issued by the will of the crown?

Q.—What explanation did Elizabeth give of the Act of Supremacy?

Q.—Mention the names of some of the most remarkable clergymen, (not Roman Catholics) who refused to comply with the ceremonies established in her reign.

Q.—What were the admitted constitutional rights of the Commons, during the reign of Elizabeth?

Q.—What was the first statute by which Roman Catholic recusants were distinguished from other recusants?

Q.—State any proofs of the increasing influence of the Commons during the reign of Elizabeth.

Q.—By what means did Elizabeth connect the church with the state?

Q.—What were the guarantees of constitutional freedom in the reign of Elizabeth?

Q.—What was Cavendish's case?

Q.—When were witnesses for the prisoner first examined on oath?

Q.—Mention any interference with the prerogative by the judges, in the reign of Queen Elizabeth.

Q.—Give an account of the manner in which the exclusive right to originate money bills, grew up in the House of Commons, and of Lord Bacon's conduct on that question, in the House of Commons.

Q.—What reasons can you give to show Mr. Hume's assertion, that the government of England during the time of the Tudors was as despotic as that of Turkey, to be incorrect?

Q.—Compare the government of the Plantagenets with that of the Tudors.

Q.—What was the legal authority of the royal proclamation during the reign of Elizabeth?

136 Q.—To what cause do you ascribe the exorbitant prerogative of the Tudors?

*James I.*

Q.—What were the attempts made by James to levy money without consent of parliament? and how were they resisted?

Q.—What was the language of the prelates as to the royal authority?

Q.—Give an account of the parliaments of 1621 and 1624.

Q.—State the instances in which during the reign of James I., the House of Commons exercised the right of impeachment.

Q.—Give an account of the changes which had taken place in the social condition of England, during the time which elapsed from the accession of Henry VIII. and the accession of James I., and describe their effect upon the temper, and importance of the House of Commons.

Q.—Give an account of the religious parties during the reign of Elizabeth and of James I.

Q.—In what were the securities of freedom defective on the accession of James I.?

Q.—What was the title of James I. to the throne of England? If hereditary right were exclusively considered, was the title of James I. to the English crown superior to any other? What were those which could be placed in the balance with it? State the instances in which, since the Conquest, hereditary right has been set aside in the succession to the English crown.

Q.—What was the great object of the policy of James in the latter part of his reign? How was it defeated?

Q.—What was the conduct of James towards his parliaments?

Q.—What was his conduct towards his judges? Give an account of his conduct on the election of Fortescue and Godwin. What was the question that arose on that election?

Q.—Give an account of his policy towards the church.

Q.—What were the most remarkable state trials during the reign of James; how far were they in conformity with existing laws, and what was most remarkable in their management?

Q.—Give an account of the character of James I.

Q.—What was the bearing of his domestic policy?

Q.—What part did he take in the religious divisions of the court?

Q.—Were any fresh securities provided against the Roman Catholics in his reign?

Q.—Does it appear that there was any just reason for the fear of the encroachments of the Roman Catholics on our civil and religious liberties?

Q.—State any causes that suggest themselves to you why precautions might then have been taken that would not now be necessary.

Q.—In what respect did James I. attempt to carry his prerogative further than any king had done since 1215?

Q.—Give an account of Lord Bacon's character considered only as a statesman, a judge, and as a law officer of the crown.

Q.—Mention any notorious abuse of the prerogative in the time of James I.

Q.—What was the manner of proceeding in our Courts of Criminal Justice?

Q.—Mention the most eminent leaders of the Puritan party during the reign of Elizabeth, and the conduct of James with respect to those parties, and

state how far, and when the Canons of the English Church were incorporated with the English law during those reigns.

Q.—In what instances did James I. interfere with the duties of the judges?

Q.—Give an instance of the intemperance of the House of Commons during the reign of James.

Q.—What remarkable state paper was drawn up by the parliament of 1621? Give a summary of its contents. Mention the offenders who were punished by that parliament.

Q.—State the advantages which the Commons had gained, and the constitutional principles which they had established in their struggles with James I. at the close of that monarch's reign.

Q.—Give an account of the negotiations between James I., and the House of Commons, for the abolition of purveyance and wardship. State when this object was accomplished, and on what terms?

Q.—Give an account of the manner in which the judicial power of the House of Commons was established.

Q.—When was the right of juries to return a general verdict established?

Q.—Give an account of the disputes between James I. and his parliaments.

Q.—Was any act affecting the right of Roman Catholic peers to sit in the House of Commons passed during the reign of James I., and in what manner did it operate on the rights of such peers?

Q.—Did James I. attempt to bias the decisions of courts of justice?

Q.—What negotiation took place between James I. and his parliament concerning an important branch of the prerogative; how did it end; and when was the object of it accomplished?

Q.—What was Peacham's case? When was the doctrine laid down in it over-ruled?

Q.—What is the act under which the bishops require

subscription to the articles from persons wishing to be ordained; and how does the practice agree with it?

Q.—What is the earliest assertion of the doctrine that the king ought not to take notice of matters pending in parliament? Mention any instance in which the constitutional rule was violated.

Q.—What was the case of Bates in the time of James I.?

Q.—Mention any instances in which the right of impeachment was exercised by the Commons in the reign of James I.

Q.—Mention any instance in the time of James I. in which the law of evidence was set aside by the judge on the trial of a prisoner accused of treason.

Q.—Compare the conduct of the parliament of James I. with that of the parliaments of Elizabeth, and state the causes of any difference you remark between them.

Q.—How were the chief guarantees of the liberty of the subject, during the reign of Elizabeth, violated during the reign of her successor.

Q.—Give an account of Sir Walter Raleigh's condemnation, and of the causes which led to his execution.

Q.—What was the chief violation of justice on the trial of Sir Walter Raleigh?

Q.—Give an account of the parliamentary opposition during the time of James I.

Q.—Mention any proofs of the increasing consequence of parliament.

Q.—Point out the misrepresentations of Hume in his account of this period of our history. State what changes took place in our jurisprudence.

Q.—What was the quarrel between Lord Coke and Lord Chancellor Ellesmere?

Q.—Give an account of the third parliament of James I., and for what is it remarkable in the history of English party?

Q.—On what footing did the Law of Evidence stand in the reign of James I.?

Q.—What had been done at that time to regulate the discipline and doctrine of the Church of England?



Q.—What were the difficulties which James I. had to encounter in his government, from what causes did they proceed, and in what forms did they appear?

Q.—How did James endeavour to raise money?

Q.—Mention the date and substance of any remarkable document put forth by the House of Commons during the reign of James I. in support of their rights.

Q.—State what changes took place in our jurisprudence.

Q.—At what period had the House of Commons established the right to interfere in the administration of public affairs?

Q.—What rights had the House of Commons succeeded in establishing at the death of James I.?

Q.—How was the Law of Evidence in cases of treason changed between the accession of Edward VI., and that of James I.?

Q.—Mention any instance of the violation of the law so altered.

Q.—In what instance during the reign of James I. did the House of Commons transgress the limits of justice and discretion?

### *Charles I.*

Q.—What was the condition of the Roman Catholics on the accession of Charles I.?

Q.—Give an account of Puritanism from its beginning till the close of the Long Parliament.

Q.—Trace the progress of parliamentary opposition to prerogative from the close of Elizabeth's reign to the breaking out of the civil war.

Q.—Give an account of the parliament of 1628.

Q.—Enumerate the chief violations of the Constitution by Charles I., and his advisers, in the interval between 1628, and April 1640.

Q.—Mention the most remarkable laws enacted by the Long Parliament as security against further encroachments of the crown.

Q.—Give an account of the quarrel between Charles

I., and his parliament, as to the Militia. What was the view taken by Whitelocke of this question?

Q.—In what respects had Charles, in his conduct towards France, given just cause of suspicion to English Protestants, and in what respect had Laud furnished matter for similar apprehensions?

Q.—Give an account of the parliament of 1628, and of the principal measure to which it obtained the assent, with an account of the manner in which that assent was given.

Q.—Give an account of the proceedings in Sir John Fenwick's case.

Q.—Give an account of the Courts of Star Chamber and High Commission.

Q.—Give an account of the temper of the House of Commons towards the court on the accession of Charles I., and of the causes to which it must be ascribed.

Q.—What was the conduct of Bancroft towards the Puritans?

Q.—What was the great act of the parliament of 1628? Give an account of the circumstances by which it was attended.

Q.—What act was immediately passed as to Strafford's children after his death?

Q.—State the relation in which the church stood to the state at the close of Elizabeth's reign; and describe the conduct of the different ecclesiastical parties, and their leaders during her reign, and those of James I., and Charles I.

Q.—What were the encroachments of Charles I. on the civil rights of the subject?

Q.—What districts of England at the accession of Charles I., were under the control of the Common Law?

Q.—What was the political conduct of Mr. Hyde, from the time he entered parliament, till the breaking out of the civil war?

Q.—Give an account of the character of the Long Parliament of 1641, up to the breaking out of the civil war, of the chief actors in it, the most remark-

able invasion of its privileges, and of the most important events connected with its existence.

Q.—Give an account of the Petition of Right, the date of it, the circumstances under which it passed, and the events by which it was immediately followed.

Q.—When did the judges declare torture to be illegal?

Q.—What was the main charge against Strafford? Give an account of the proceedings in parliament which led to his execution. State your opinion as to the justice of those proceedings, and the reason on which it depends.

Q.—How long did Charles I. govern without parliaments?

Q.—How does Lord Clarendon describe the two last parliaments of Charles I.?

Q.—What were the features of the English constitution that had remained unaltered from the time of Edward I., to that when Charles I. succeeded to the throne?

Q.—When was the Petition of Right passed? By what evils was it occasioned? What was the conduct of the king in passing it?

Q.—What was its effect? How was it observed?

Q.—Name the leaders of the opposition to the government of Charles I. in the year 1640. What particular abuse did Mr. Hyde attack?

Q.—Give an account of the public conduct of Charles I. from his accession to the breaking out of the civil war.

Q.—Describe Hampden's life and character.

Q.—Give an account of the conduct of Charles I. towards the parliament which preceded the Long Parliament.

Q.—Give an account of the principal measures of the last parliament of Charles I. before the breaking out of the civil war.

Q.—Trace the progress of parliamentary opposition to prerogative from the accession of Elizabeth to the breaking out of the civil war; stating your opinion as

to the effect of religious conviction in upholding, modifying, and directing, that opposition.

Q.—Is Blackstone correct in asserting that a commoner cannot be impeached?

Q.—Give an account of the manner in which the exclusive right to originate Money Bills grew up in the House of Commons.

Q.—State the causes which connect temporal and ecclesiastical history during the reigns of Elizabeth, of James I., and of Charles I.

Q.—When did the principle of the appropriation of supplies begin; and when was it finally established?

Q.—Contrast the government of Charles I. with that of Charles II.

Q.—What was Pine's case?

Q.—What is Lord Clarendon's opinion of the decision of the judges in the case of ship-money, and what effect on the king's interest does he ascribe to it?

Q.—Contrast the government of Elizabeth with that of James and Charles I.

Q.—What reason can you assign for the change of feeling towards Buckingham, and the distrust of the king, exhibited by the first parliament of Charles I.?

Q.—What was the origin of the Court of High Commission, as it existed in the time of Charles I.?

Q.—When was that Court abolished?

### *Charles II.*

Q.—What prerogatives had the crown parted with since the year 1660?

Q.—What security for freedom had been established since 1660?

Q.—Trace the struggles between the court and country party, during the reign of Charles II.

Q.—Give an account of the three first ministers of Charles II.

Q.—What was the language of Charles II., as to the Triennial Act?

Q.—How were Dissenters treated after the Restoration?

Q.—Give an account of the administration of Charles II., after the dissolution of the Oxford Parliament.

Q.—Mention any remarkable question which arose as to the law of impeachment in Lord Danby's case, and the manner how, and the occasion when that question was set at rest.

Q.—What means did Charles II. take to gain an influence in parliament?

Q.—Give an account of the changes in the constitution during the reign of Charles II., and of the state in which it existed at his death.

Q.—Give an account of the policy of Charles II.

Q.—Give an account of the Exclusion Bill.

Q.—Give an account of the most remarkable instances in which the right of impeachment was exercised in the reign of Charles I. and Charles II., and of any constitutional questions which arose from its exercise.

Q.—What were the causes which led to the disgrace of Lord Clarendon?

Q.—What was the object of Charles II. in sanctioning harsh laws against Protestant Dissenters?

Q.—What was the policy of the Cabal administration, of whom did it consist, and what occasioned its downfall?

Q.—What were the most remarkable acts of government during that administration?

Q.—Give an account of the Triple League.

Q.—In what respect did the attacks made on the constitution during the reign of Charles II. differ from those made upon it in the reign of James I. and Charles I.?

Q.—On what ground did the condemnation of Sir Harry Vane, after the restoration of Charles II., proceed?

Q.—What was the Test Act, and what effect did it produce?

Q.—What gave rise to the discussion as to the abatement of impeachments, by dissolution in the reign of Charles II.?

Q.—What was the rule laid down, and how has it been since observed?

Q.—What great service did Clarendon and Southampton render to the liberties of England after the restoration?

Q.—What was the law of evidence in cases of treason at the death of Charles II.?

Q.—Mention any case in which it had been set aside by the judges.

Q.—Give an account of the Corporation Act.

Q.—What were the most remarkable acts of government during the Cabal administration?

Q.—When were feudal tenures finally abolished?

Q.—Trace the progress of party during the reign of Charles II.

Q.—Give an account of Bushell's case.

Q.—When was the Habeas Corpus Act passed? What immediately led to it, and what was its effect?

Q.—What is the opinion of Blackstone, as to the constitution in the reign of Charles II.?

Q.—Contrast the dangers to which the constitution was exposed in the reign of Charles II., with those which threatened it in the reign of Charles I.

Q.—How many witnesses were required to establish a charge of treason, in the reign of Charles II.?

Q.—What was the case of Sir Thomas Armstrong?

Q.—Give an account of Lord Russel's trial.

Q.—Give an account of the trial of College.

Q.—Give an account of the character of Danby.

Q.—State the grounds on which the proceedings in Lord Russel's trial may be questioned.

Q.—Give an account of the Popish plot. State the most remarkable victims of it, and the manner in which they were destroyed.

Q.—What was the cause of the complaint against Chief Justice Kelynge?

306 Q.—Give an account of the proceedings against Lord Bristol.

Q.—Give an account of the trials of Cornish and Rosewell.

Q.—When were Catholic peers excluded from the House of Lords?

Q.—Give an account of the Rye House Plot, and of the trials of the principal persons who suffered for it.

Q.—Give an account of Algernon Sidney's trial.

Q.—What was the law of constructive treason in the reign of Charles II.?

Q.—Mention any instances in which that law was applied.

Q.—What laws were enacted against Dissenters in the reign of Charles II.?

Q.—Compare the conduct of the second and fourth parliaments of Charles II. with that of the parliaments in the time of James I.

Q.—When was the Statute of Wills passed; and to what cause do you ascribe the necessity for such a measure?

Q.—What was the state of the press in the time of Charles II.?

### *James II.*

Q.—In what did the attacks on the constitution, during the reigns of James II. and Charles II., differ from those made upon it during the reigns of James I. and Charles I.?

Q.—Mention any causes during the reign of Edward VI. and James II. in which the law of evidence in cases of treason had been disregarded or misrepresented by the judges.

Q.—What rights had the House of Commons succeeded in establishing at the close of the reign of James II.?

Q.—What unconstitutional tribunal did James II. establish?

Q.—What effect did the revolution of 1688 produce in the doctrines and language of the executive government after that period as compared with the principles insisted upon by the Stuarts.

Q.—What were the designs of James II. in 1685, which excited alarm in the House of Commons?

Q.—What was the temper of the parliament of 1685.

Q.—How did James II. manifest his purposes?

Q.—What was the conduct of James with regard to toleration?

Q.—Give an account of the trial of Lord Delamere.

Q.—Give an account of the trial of the Seven Bishops.

Q.—Give an account of the causes which led to the Revolution of 1688, and compare the conduct of Hampden and the leaders of the parliamentary party in 1641, with the conduct of those who brought about the revolution of 1688.

Q.—What was the condition of those who dissented from the Established Church at the revolution?

Q.—What act was it the purpose of James II. to repeal?

Q.—Give an account of the conduct of Halifax during the reign of Charles II. and of James II.

Q.—State the concessions made by the crown to the parliament of James II., and the causes which led the king to put an end to the sittings.

Q.—Compare the conduct of the statesmen who brought about the revolution of 1688, with those who led the opposition to Charles I.

Q.—Compare the conduct of the parliaments of James II., with that of the parliament of Elizabeth, and state the cause of any difference you remark between them.

Q.—What was the claim of the dispensing power, in what cases was it required by the judges, and when was it finally abolished?

### *William III.*

Q.—What was the course followed with regard to supplies by parliament on the accession of William III.?



Q.—State the date and purport of the Act of Settlement, and of the events that made it necessary.

Q.—Mention the parliamentary enquiries which were set on foot during the reign of William III.

Q.—Give an account of the progress of religious liberty in England, from the reign of Elizabeth to the Toleration Act.

Q.—When was the distinction of the cabinet from the privy council fully established?

Q.—What change took place in the trial of a peer in the reign of William III.?

Q.—When did the Licensing Acts cease to control the press?

Q.—On what conditions did William and Mary accept the crown of England?

Q.—What was the great object of William's policy?

Q.—What treaties were concluded with France during his reign?

Q.—What was the result of Admiral Herbert's engagements with the French fleet?

Q.—What efforts did James II. make for the recovery of his crown, and in what way were they defeated?

Q.—What great National establishments were established during the reign of William III.?

Q.—Name any remarkable petition presented to the House of Commons.

Q.—Did anything remarkable happen during the reign of William III., to any speakers of the House of Commons?

Q.—What was the last offence committed by Louis XIV. against England, before the war of the succession?

Q.—What was the policy of William III. towards Ireland?

Q.—State the character of William III., and cite the events of his life which you think illustrate it.

Q.—Give an account of the parties, whig and tory, from their beginning to the peace of Utrecht.

350 Q.—What change took place in the constitution of parliament, and how was it effected?

Q.—Give an account of the characters of Halifax and Somers.

Q.—What was the character of the House of Commons by which Somers, Portland, and Halifax were impeached? To what discussions did that impeachment give rise between the two Houses?

Q.—When were counsel first allowed to speak for prisoners accused of High Treason?

Q.—State the chief provisions, and the date of the Act of Settlement.

Q.—Give an account of the parliamentary enquiries which took place in the reign of William III.

Q.—Give an account of the Convention Parliament in 1689.

Q.—Give an account of the settlement of the Revenue during the reign of William III.

Q.—From what parties did William III. select his ministers?

Q.—What measure, supported by Lord Somers, was proposed concerning Corporations, and what became of it?

Q.—Give an account of the condition of the press from the restoration of Charles II., when the last licensing Act expired.

Q.—Give an account of the scheme of Religious Toleration of William III., and of the extent to which it was established.

Q.—Give an account of the change in the Law of Treason, in the reign of William III.

Q.—What was the date of the treaty of Ryswick, and what events led to the war which followed it?

Q.—Name the most eminent judges employed by William III.

Q.—Give an account of the differences between the House of Lords and the House of Commons during the reign of William III.

Q.—Give an account of the causes which led to the impeachment of Lord Somers, and of the result of that proceeding.

Q.—Mention the names of persons expelled from the

House of Commons during the reign of William, and the causes which led to their disgrace.

Q.—State the purport of the Acts of parliament which mark most clearly the social progress of England during the reigns of Elizabeth, of Charles II., and of William III.

Q.—Give an account of the state of parties on the accession of William III. to the English crown.

Q.—State the instances in which the royal assent was refused to bills during the reign of William III.

Q.—Had the privileges of corporations been invaded during the reign of Charles II., and on what occasions?

Q.—Had any attempt been made in any former reign, and when, to appropriate the revenue to specific purposes?

Q.—Give an account of the consequences which the change adopted at the revolution in the votes of supply has produced in the working of our government.

Q.—What change took place during the reign of William, as to the period for which parliaments were to sit? Give a history of the different attempts to bring about the object, and their ultimate result.

Q.—What measures were taken to make the judges independent?

Q.—Give an account of the manner in which William III. constructed his first administration.

Q.—What were the most remarkable acts of the first parliament of William III.?

Q.—When did the principle of the appropriation of supplies begin, and when was it finally established?

Q.—Give an account of the schism of the non-jurors, and the conduct of Saneroff.

Q.—During this reign in what manner were the witnesses for a prisoner accused of felony examined? What act of parliament passed, bearing on the subject, in the reign of James I.? What is the opinion of Lord Coke as to the practice which prevailed?

Q.—What measures were brought forward affecting the character and constitution of the House of Commons during the reign of William III.?

Q.—What course did the House of Commons adopt with regard to William's army after the treaty of Ryswick?

Q.—What were William's views with regard to those who dissented from the Established Church, and on what footing was the principle of toleration placed during his reign?

Q.—Compare the proceedings of the revolution of 1688 with those of the opposition in 1641, with reference to the dangers to be guarded against, and the remedies that were adopted.

Q.—What improvements were made in our constitution during the reign of William III.?

Q.—Give an account of Simpson's case as given by Lord Coke; and of the constitutional principles it establishes.

Q.—Give an account of the domestic policy of William III.; and of his attempts to balance the English parties.

Q.—Were those measures modified, and when?

Q.—What were the proceedings of Sir John Fenwick? State your opinion as to the justice of those proceedings, and the reasons on which it rests.

Q.—What measures were taken for the exclusion of placemen from parliament during the reign of William III.?

Q.—What parliamentary enquiries were set on foot during the reign of William III.?

Q.—Compare the conduct of the statesmen who brought about the revolution of 1688, with the conduct of those who led the opposition to Charles I.

Q.—What were the limitations of prerogative in the Act of Settlement?

Q.—Give an account of the influence of the crown in the balance of the constitution from the reign of Edward I., to the revolution of 1688.

Q.—State the causes which led to the revolution of 1688.

Q.—Give an account of the Religious Toleration

during the reign of William III., and of the degree of success which his efforts in that cause obtained.

Q.—State the law as to the eligibility of placemen, and pensioners, to sit in parliament, as it now exists.

Q.—Give an account of the law concerning the prerogative down to the present time.

Q.—Compare Magna Charta, the Petition of Right, and the Bill of Rights, and show how the outline of a free constitution, traced in the first, was filled up in the second and third enactments.

Q.—Trace the progress of the influence of the House of Commons from the accession of James I. to the year 1688.

Q.—Give an account of the Bill of Rights; of the provisions it contained, and of the reasons which made it necessary.

### *Anne.*

Q.—Give an account of the progress of toleration from the accession of Charles II. to the death of Anne.

Q.—Give an account of the Law of Treason and its changes during the same period.

Q.—Give an account of the changes in the constitution from the abdication of James II., to the accession of Queen Anne.

Q.—What was the legal condition of the press until the reign of Queen Anne?

Q.—Mention some instances in which the right of impeachment has been exercised from the earliest occasion to the reign of Anne.

Q.—What measures were taken for excluding placemen from parliament during the reign of Queen Anne?

Q.—Give an account of the causes which led to the trial of Sacheverel, and of the principles it established.

Q.—What was the case of *Ashby v. White*?

Q.—Give an account of the policy and character of Godolphin, and of the causes which led to the downfall of his administration.

Q.—Give an account of the constructive interpretation of the Law of Treason from the accession of Henry VIII. to the trial of Dammaree and Purchase.

Q.—Trace the growth of the importance of the House of Commons from the accession of Elizabeth to that of Anne.

Q.—When were witnesses for a prisoner first allowed to be sworn?

### *George I.*

Q.—When was the Septennial Act passed? on what grounds was it justified? State such reasons as occur to you in favour of, or against it.

Q.—Give an account of the laws affecting the duration of parliament from 1640 to 1720.

Q.—Mention the instances in which the right of impeachment has been exercised from the earliest period to the reign of George I.

Q.—What change took place in our constitution during the reign of George I.?

Q.—What change took place in the Law of Treason between the trial of Lord Russell, and the accession of George I.?

Q.—Give an account of the difference between whig and tory illustrated from history on the accession of George I.

Q.—Give an account of the Peerage Bill introduced by Lord Sunderland, in the reign of George I., of the fate it met with, and the object it had in view.

Q.—What proceedings were taken against Bishop Atterbury, and on what grounds?

Q.—Trace the progress of religious liberty in England from the accession of James I., to the accession of George I.

### *George II.*

Q.—Trace the progress of toleration from the time of Elizabeth to that of George II.

Q.—Give an account of Sir Robert Walpole's Excise Scheme.

*George III.*

Q.—When did juries obtain the right of giving a general verdict in cases of libel.

Q.—Give an account of the attempt made to stop the influence acquired over the House of Commons by the crown down to the reign of George III.

Q.—Give an account of the Law of Treason from the statute of Edward III., to the close of the reign of George III.

Q.—Trace the history of legislation as it appears in the Statute Book, from the reign of Elizabeth to that of George III.

Q.—Give an account of the liberty of the press as it may be gathered from our State trials, debates in parliament, and Statute Book, from the days of Elizabeth to Mr. Fox's Libel Act.

Q.—When was the question as to the validity of general warrants finally decided?

*Victoria.*

Q.—Give an account of the Law of Libel, taking the word in its widest sense down to the present time.

Q.—When was the power of making a will disposing of all his property not entailed first given to the English subject.

Q.—Give an account of the Law of Treason, as it affects Peers and Commons, and the changes it has undergone from Edward III. to the present time.

Q.—What is the effect of a Royal Proclamation?

Q.—What is the check provided by the constitution on the improper exercise of the prerogative of the crown?

Q.—What are the three estates of the realm?

227 Q.—Give an historical account of the jurisdiction of the House of Lords, and of the resistance to it by the House of Commons.





COMMON LAW.



## OUTLINE OF COMMON LAW.

The municipal law of England is divided into the *lex non scripta*, the *unwritten* or common law; and the *lex scripta*, the *written* or statute law. The unwritten or *common* law is by Mr. Justice Blackstone, divided into three kinds: I. *General customs*; which are the universal rule of the whole kingdom, and form the common law in its stricter and more usual signification; II. *Particular customs*; which affect only the inhabitants of particular districts, and III. *Certain particular laws* which by custom are adopted and used by some particular courts of pretty general and extensive signification.

There are three Superior Courts of Common Law: the Queen's Bench, the Exchequer of Pleas, and the Court of Common Pleas. The inferior Courts of Common Law are the County Courts, the Courts of Record, and other Local Courts with civil jurisdiction.

The actions brought in the Courts of Common Law are mostly for breach of contract, or for wrongs independent of contract. (7 22 22)

### *Of Contracts.*

A *contract* is an agreement between two or more persons to do or not to do a particular act. Contracts in this country are either contracts by matter of record, deeds, or simple contracts.

Contracts *by matter of record* are contracts acknowledged in open court before an officer of the court, and recorded in the presence of the party making the

acknowledgement. A record is proved by mere production of the document. The recognizances entered into by witnesses to enforce their attendance at criminal courts, are the most usual recognizances at the present day.

*Deeds* are contracts in writings on parchment or paper, and *sealed and delivered* as a deed. No consideration is requisite for a deed, except in the case of a bargain and sale of lands, a covenant to stand seised to a use, and a covenant in restraint of trade. A deed may be in any language, but all certificates, patents, charters, bonds, records, judgments, statutes, and recognizances must be written in the English language. A deed is sometimes called a specialty, and is regarded as of a much superior nature to a simple contract. Thus, if a simple contract (which will be afterwards explained) is made and afterwards a contract by deed is executed by the parties for the same object as is contemplated by the simple contract, the latter becomes *merged* in the deed and cannot be enforced, although the deed may.

A *simple contract* is either in writing or verbal, and must in either case be founded on a consideration recognised by law. If made without consideration the contract is called a *nudum pactum*, or one which cannot be enforced by process of law.

For the validity of *all contracts* there are two requisites. I. The parties must be competent to contract. II. The object of the contract must be legal. For the validity of simple contracts in addition to the preceding there are two other requisites, and these are: III. The contract must be founded on good legal consideration. IV. The contract must be mutual.

I. Parties *competent to contract* are all persons 21 years of age or more, unless they are married women, persons of unsound mind, alien enemies, outlaws, or convicted felons.

A person under twenty-one years of age is regarded by the law as *an infant*, and his contract, unless of a beneficial character to himself, or for necessities for

himself, or his wife, or family, is void. Necessaries are articles supplied to the infant suitable to his station in life, and in general comprise lodgings, meat, drink, apparel, physic, and suitable instruction. An agreement by an infant to serve for wages is considered of a beneficial character, unless there are stipulations in it of an inequitable nature. A deed if beneficial to an infant is merely *voidable* by him, and until avoided it stands good, but if the contract be prejudicial to the infant, as a bond with a penalty, it is void.

After full age an infant may *ratify his simple contract* by any written instrument signed by him.

A *married woman* is incapable of binding herself at law by any contract, it being regarded as absolutely void, as her husband and she are in contemplation of law but one person. But after a judicial separation by which the marriage is dissolved, or if the husband has been convicted of felony and transported, she is capable of contracting.

A *lunatic* is liable on an executed contract, where the plaintiff had no notice of insanity and practised no imposition upon him.

*Alien enemies*, or subjects of a country with which we are at war, are incapable of making contracts, which are wholly void and cannot even be enforced upon the return of peace.

*Outlaws and persons under sentence for felony* are disabled from suing upon contracts made before or during the continuance of the disability.

II. The object of the contract is *legal* if it does not contravene the principles of equity, the rules of the common law, or any statute.

Contracts *invalid in equity* will be adverted to elsewhere.

Contracts *illegal at common law* are those which are contrary to public policy, tend to promote immorality or crime, or are fraudulent.

Among contracts *contrary to public policy* are those in general restraint of trade, or marriage, or which tend to create monopolies. Among contracts *which tend to promote immorality or crime* are contracts to print or

publish immoral books, indemnities against the publication of libels, and promises to reward a person for committing an assault or other crime. *Fraudulent* contracts are those which, but for the deceitful representation or concealment of a material circumstance relating to the contract by one party, would not have been entered into by the other party to the contract.

Contracts *illegal by statute* are those which are prohibited by statute, or subject the offending party to a statutory penalty, or contravene any statute made to protect one contracting party from the oppression of another. If, however, no infringement of the law was contemplated by the parties, but an incidental violation of the statute occurs collateral to the contract, the validity of the contract is not affected. Among contracts illegal by statute are those of tradesmen, artificers, workmen, labourers, and others of the same class in their ordinary callings on Sundays, contracts which infringe the Truck Act, the Revenue Acts, or the Factory, Bleach, or Print Works Acts.

III. The *consideration* required for the validity of a simple contract is a benefit to one party or a detriment to the other party to the contract. In other words, a consideration is the legal equivalent or return for an engagement of any kind. Considerations are of four kinds: 1. A present gift from A. for a future similar gift by B. 2. A present act by A. for a future act by B. 3. A present act by A. for a future gift by B. 4. A present gift by A. for a future act by B. Considerations are also divided into executory and executed.

An *executory* consideration is one which is to take place. An *executed* consideration is one which is past.

A benefit to one party or a detriment to the other party being deemed a valid consideration according to law, love or affection, friendship, a mere moral obligation, a voluntary courtesy, the termination of disputes, the performance of an act which the party is under no legal obligation to perform, or a by-gone transaction is an *insufficient* consideration for a simple contract. Among *sufficient* considerations are a trust reposed, work or services to one of the parties to the

contract, or for a third party at his request, by-gone services rendered pursuant to a previous request, or where a request is implied by law (as is the case where a man retains the advantage of the consideration), moral obligations, which but for the intervention of some positive rule of law or statutory enactment would be binding if accompanied by an express promise, forbearance of valid or doubtful legal or equitable rights, and the performance of an act which the party is under a legal obligation to perform.

IV. A simple contract must be *mutual*. Thus a written agreement by A. to serve B. for one year must contain an undertaking by B. to employ A. for that time.

Some contracts are required to be by deed, others in writing, but most contracts may be made verbally.

Contracts required to be *by deed* are executory gifts of personalty, grants of incorporeal rights, irrevocable contracts to hunt, fish, or shoot, with liberty to take the game or fish obtained, contracts with agents empowering them to execute deeds, assignments of patents, transfers of shares in Joint Stock Companies, sales of ships, contracts of apprenticeship to the sea service, and feoffments, partitions, exchanges, leases, assignments, and surrenders under 8 and 9 Vic., c. 106.

In general, too, corporations can only contract by deed under the corporate seal. To this rule there are exceptions; and these are that corporations may make small contracts of constant occurrence without deed, and that trading corporations are allowed to make mercantile contracts in the same manner as any person engaged in commercial pursuits.

Contracts required to be *in writing* are, 1. Agreements that are not to be performed within one year from the making thereof. 2. Contracts, or sales of lands, tenements, or hereditaments, or any interest in or concerning them. 3. Promises by an executor or administrator to answer damages out of his own estate. 4. Promises to answer for the debt, default, or miscarriage of another. 5. Agreements made in consideration of marriage. All the preceding instru-

ments are required to be in writing by sec. 4 of the Statute of Frauds, 29 Car. II., c. 3. By sec. 17 of the same statute, contracts for the sale of any goods, wares, or merchandise for the price of £10 and upwards, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, must be in writing, made and signed by the parties to be charged by such contract, or their agents lawfully authorised; and by 9 Geo. IV., c. 14, this enactment is extended to contracts for the sale of goods which have to be made or completed. Fire, Life, and Marine Assurances are required to be in writing or printed. Special contracts with Railway or Canal Companies, for the carriage of goods, acceptances of bills of exchange, agreements to ship by merchant seamen, and acknowledgments to take case out of Statutes of Limitation, out of Prescription Acts, or out of Real Property Limitation Act, are also required to be in writing. In the term "writing" is included printing.

Although contracts in writing have many obvious advantages over mere verbal contracts, they are not in law regarded as superior. Both contracts are called *parol*, although this word has in general the same signification as *verbal*.

In the *construction* of contracts the principal rules are, 1. The whole contract is to be taken into consideration. 2. The terms of the contract are in general to be understood in their ordinary sense. 3. Where the contract relates to mercantile or professional matters, evidence of the general usage of the trade or the profession is admissible, unless it would contradict the plain words of the document. 4. Evidence of customs affecting agricultural contracts is admissible, unless excluded by an express provision on the subject-matter of the contract. 5. In the construction of all contracts the surrounding circumstances may be taken into consideration. 6. Parol evidence is admissible to explain a *latent* ambiguity; that is, one which is not apparent on the face of the contract.

Contracts are either implied or express. An *implied* contract is one which arises from the mere construction



of law. An *express* contract is one which arises from the agreement of the parties. Among implied contracts are those which enable a person who has paid money under a mistake of fact, or upon a consideration which has failed to recover back the amount, and those which require a surety in proportion to his liability, to reimburse a co-surety who has had to pay the whole amount of the debt of the principal. Express contracts arising, as they do, from the stipulations of the parties, are too numerous to be specified. Among the most important express contracts, those of Bailment, Bills of Exchange, Bills of Lading, Charter Parties, Debt, Guarantees, Landlord and Tenant, Fire and Life Assurance, Marine Insurance, Master and Servant, Principal and Agent, and Sale.

A *bailment* is defined by Dr. Story to be "the delivery of a thing *in trust* for some special object or purpose, and upon an express or implied condition to fulfil that trust."

Bailments are either for the benefit of: 1. The bailor, as deposits or mandates. 2. The bailee, as a commodate. 3. Both parties, as a pledge and letting to hire.

The definitions of the different kinds of bailments are thus stated by Sir William Jones. "*Deposit* is a bailment of goods to be kept for the bailor without recompence. *Mandate* is a bailment of goods without reward, to be carried from place to place, or to have some act performed about them. *Commodate* is the bailment of goods to be used by the borrower without paying for it. A *pledge* is a bailment of goods by a debtor to his creditor, to be kept till the debt be discharged. *Letting to hire* is 1, a bailment of a thing to be used by the hirer for a compensation in money; or 2, a letting out of work and labour to be done, or care and attendance to be bestowed by the bailee on the goods bailed, and that for a pecuniary recompence; or 3, of care and pains in carrying the things delivered from one place to another, for a stipulated or implied reward."

When a bailment is for the benefit of the *bailor*, he

will be liable only for *gross* negligence, which is the want of that care which every man of common sense, how inattentive soever, takes of his own property. "Where the bailment is for the benefit of the *bailee* he is liable for *slight* negligence, or the omission of that diligence which very circumspect and thoughtful persons use in securing their own goods and chattels." Where the bailment is for the benefit of *both bailor and bailee*, the latter is liable for ordinary negligence or "the omission of that care which every man of common prudence takes of his own concerns."

Among bailments of continual occurrence is that of the carriage of goods. "A common carrier is in the nature of an insurer, and liable for every accident, except by the act of God or the king's enemies." Per Lord Mansfield in *Forward v. Pittard*. The 1 W. IV., c. 68, relieves common carriers by land from liability, for the safe carriage of certain specified articles of great value, in small compass in any parcel, when the value of such article or articles shall exceed the sum of ten pounds, unless the value is declared, and an increased carriage paid. Notice of the increased charge must however be posted in the booking office of the carrier.

A *bill of exchange* is an unconditional written order from one person to another, to pay a sum of money to the former or a third party. Bills are either inland or foreign. The term *inland bill* is by the Mercantile Law Amendment Act, 1856 (19 and 20 Vict. c. 97, s. 7), applied to bills drawn in any part of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them, being part of the dominions of her Majesty, and made payable in or drawn upon any person resident in any part of the said United Kingdom or islands. The term *foreign bill* is consequently applied to any bill drawn *out* of the United Kingdom or such islands, although payable therein. For *the purposes of the Stamp Acts* however, an *inland bill* is one which is drawn in Great Britain or Ireland and

payable in either, and for the *same purposes* a *foreign bill* is one drawn out of Great Britain or Ireland, although payable in either.

The person who makes the order is called the *drawer*, the person to whom the order is payable, the *payee*, and the person to whom it is addressed, the *drawee*. Bills are assignable if drawn payable to the *bearer*, to the payee *or his order*, to the *order* of the payee, to the *assigns* of the payee or contain similar words of negotiability. Bills payable to bearer are transferred by mere *delivery*. Other negotiable bills are transferred by *indorsement* which is either special or in blank. An indorsement *in blank* merely consists of the signature of the payee, or other person assigning the bill. A special indorsement contains in addition the name of the person to whom the bill is transferred. The person making the indorsement is called the indorser, and the person in whose favour it is made, the *indorsee*.

Bills which are drawn otherwise than on demand are usually also presented to the drawee for *acceptance*, which is an intimation signed by him on the bill that he will pay it when due. Where a bill is payable at *sight*, or at a specified period *after sight*, acceptance is *indispensable*, the word *sight* being the mercantile expression for acceptance. The drawee is entitled to retain a bill presented for acceptance, for twenty-four hours, unless the last post on the day after presentment should close before the twenty-four hours have elapsed. Where however, the day after presentment for acceptance is a Sunday, Good Friday, Christmas Day, or a day of Public Thanksgiving, or Humiliation, the period is extended to forty-eight hours, but subject to similar curtailment as the period of twenty-four hours. After acceptance the drawee is called the *acceptor*. The acceptance of a bill is either general as: *Accepted, A. B.* or *Accepted, payable at C. D. & Co.'s, Bankers, London, A. B.*; special as: *Accepted, payable at three months*, when the bill was drawn at two months; or *qualified* as: *Accepted,*

*payable at C. D. & Co.'s, Bankers, London only, A. B.*

Where acceptance of a bill is refused, the holder of the bill should give immediate notice to the drawer and prior indorsers. Where the bill is a foreign bill it must also be *protested*.

Upon receipt of due notice of the non-acceptance of a bill, the drawer and prior indorsers become immediately liable to the holder of the bill.

In calculating the time when bills payable otherwise than *on demand* will fall due, an addition of three days called *days of grace* must be made. Thus a bill dated the 1st of May in any year, and payable at one month after date, is due on the 4th of June. On bills payable on demand no days of grace are allowed. Other bills become payable on the last of the days of grace unless it happens to be a Sunday, Good Friday, Christmas Day, or a Day of Public Fast or Thanksgiving, when the bill is payable on the preceding day.

To charge the *acceptor* of a bill, it may be presented at his house or place of business, unless there are words on the bill stating that the bill will be payable at a particular place *only*. To charge the *drawer and prior indorsers*, however, the bill, if payable at any particular place as a banking house, must be presented there whether the word *only*, or any similar word restrictive of the place of payment be contained on the bill or not. Where a bill is presented for payment at the acceptor's place of business, or at a banking house, presentment must be made during the usual business hours. Where a bill is presented at the residence of the acceptor it ought to be presented at an hour when he is likely to be there. Although the acceptor should become bankrupt or insolvent the bill must be presented for payment. Where the acceptor has absconded presentment is excused, but not merely when he has changed his residence.

On non-payment of a *foreign bill* it must be protested for non-payment. An inland bill is generally only *noted*, but this formality is not essential. On refusal, by the acceptor to pay a bill, the holder, if he wishes to

have recourse against the parties, should give immediate notice to each of the prior indorsers and the drawer. This notice is generally required to be given within twenty-four hours, or under the circumstances already mentioned forty eight hours after non-payment, where the bill is an inland one. In the case of a *foreign* bill, notice by the next mail after non-payment is sufficient. A longer time would however be allowed in any cases where the holder did not know the address of any of the parties. The notice should clearly express that the bill has been presented and refused payment. The party on receiving notice is bound to pay the amount of the bill to the holder.

*Promissory Notes*, in regard to negotiability, are in general regulated by the same rules as bills of exchange. In regard to presentment for payment however, the maker of a promissory note is placed in a less favourable position than the acceptor of a bill of exchange. Thus the case of *Rumball v. Ball*, 10 Mod. 38, decided that to charge the maker in an action on a note payable on demand, a demand need not be alleged or proved, for the action itself is a demand!! Unless, too, the promissory note is payable at a particular place, no presentment for payment or notice of dishonour is required to charge the acceptor. Indorsers however, of promissory notes are not liable to the holder, unless due presentment for payment, and notice of dishonour have been given. Bankers only may issue promissory notes for £100 and under, payable to bearer on demand.

A *Cheque* is an obligatory order on a banker to pay money. Cheques are usually drawn payable to *bearer*, but sometimes to *order*, *self*, or a specified person. Cheques are rarely, if ever, accepted. By the 23 Vic., c. 15, a stamp duty of one penny is imposed on cheques. The holder of a cheque, who omits to present it for payment within a reasonable time, will have to bear the loss in the case of the failure of the bank. "A person receiving a cheque has till the following day to present it, when there is the ordinary means of doing

so." (Tindal C. J. *Moule v. Brown*, 4 New Ca. 267.) But this rule is only applicable where the drawer is prejudiced by the delay.

Cheques which are intended to be forwarded by post are usually crossed. A *crossed cheque* is one which has the name of a banker written across it, or has two transverse lines drawn across it, and with the words "and company," or any abbreviation thereof, with or without the name of a banker. The effect of any of these crossings is to prevent payment except to a banker, or (as the case may be) to the banker specified. Where the crossing is general, any lawful holder may strike out the crossing, and insert the name of a banker.—21 and 22 Vic., c. 79.

A *bill of lading* is a document acknowledging the receipt of goods on board a vessel, and expressing the conditions on which they are to be carried to a specified place and person. The difference between a bill of lading and a charter party is that the latter is a contract for the whole or a particular part of the ship. Where the owners of a vessel profess to carry goods for any person willing to pay the freight, the vessel is called a *general ship*.

The contract of *debt* arises whenever a definite or liquidated sum becomes payable to any person. Debts are either of record, as a judgment; specialty, as a bond; or simple contract debts, as a loan. The contract of debt may arise in many ways. Thus, if money be deposited with a banker to be drawn out by cheque as required, and on closing the account the banker should refuse to pay the customer the balance, it may be recovered as *money lent*. Where there are co-defendants in an action of contract any one of them after judgment recovered against himself may sue the other or others for contribution; but where the action was for a *tort* any co-defendant paying the whole amount of the judgment has no redress against his co-defendants.

A *guarantee* being "a promise to answer for the debt, default, or miscarriage of another," is required, as we have seen, by the 4th section of the Statute of

Frauds, to be in writing. Previously to the 19 and 20 Vic., c. 97, s. 3, the consideration for the guarantee was required to appear on the face of the document. Guarantees are *limited* where their extent and duration are specified, *continuing* when the liability of the surety is unlimited. Where a guarantee is given to a firm it will only bind the surety so long as no change takes place in the firm, unless otherwise expressed.

The contract of *landlord and tenant* is too well known to require a definition. Whenever by the terms of the contract there is an agreement for the use of a specified piece of land, or a particular house or part of a house, the contract, being one relating to lands, tenements, or hereditaments, is required by the Statute of Frauds to be in writing. The tenancy may be for any period fixed by the parties, but is usually yearly for lands and unfurnished houses, monthly for furnished houses, and weekly for lodgings. Where the tenancy is yearly, or in other words, from year to year, notice to quit must be given six calendar months (182 days) before the expiration of any current year. Where however, the tenancy begins and ends at any of the usual quarter days, notice for the half-year or two quarters before the expiration of the current year is sufficient notice. Where the tenancy is monthly or weekly, notice for a month or week terminating with the current month or week is requisite. In all cases however where premises are taken for any specified period, as one week, one month, one year, no notice is requisite.

Rent is not strictly due until midnight of the day on which it is made payable. Should the rent not be paid when due, the landlord may on the following day enter upon the premises and take possession of the goods he may find there. This right of the landlord is called a *distress*. Tools and implements of trade, and beasts of the plough are privileged from distress, while other sufficient distress can be found. Articles in actual use at the time cannot be distrained, and the same privilege is extended to goods which have been sent to a tradesman or artificer in the way of his trade,

for any particular purpose, as cloth sent to a tailor's shop to be made into clothes, corn sent to a mill to be ground or sold.

The goods when distrained are impounded on the place or in a pound. Notice of the distraint is then given to the tenant, and unless payment of the rent and charges is made within five days, or the goods are replevied, the articles distrained are appraised by two sworn appraisers, and after such appraisement the goods distrained are sold in satisfaction of the rent, and of the charges of distress, appraisement and sale, and the surplus (if any) belongs to the tenant. One of the harshest features of the law of distress is that the goods of an under tenant or lodger, may be distrained for rent due by his landlord to the owner of the premises. A tenant from year to year in the absence of express stipulation, is bound to keep the premises wind and water-tight, but he is not bound to make substantial repairs.

A contract of *life assurance* is an engagement by one party in consideration of a series of periodical payments called premiums, to pay a sum of money on the death of another. It differs from a contract against the perils of the sea, or against fire, in not being of the nature of an indemnity, although it resembles those contracts in requiring that the insured should have a pecuniary interest in the subject-matter of the policy.

In *Fire Assurance Policies* the most important requisite is the proper description of the subject-matter of insurance, to show the nature of the risk. After the policy has been effected, any alteration in the premises increasing the risk will invalidate the policy.

*Marine policies* are either voyage or time policies. A *voyage* policy is one intended to be confined to one or more voyages, while a *time* policy states the period for which the assurance is to last. Voyage and time policies are also subdivided into *valued* and *open* policies. In both time and voyage policies there is an implied warranty, that all the usual shipping documents shall be carried on board the vessel, and that she will



pursue her voyage without deviation. Where the policy is a *voyage* policy, there is also an implied warranty that the vessel is seaworthy, and sufficiently manned when she puts to sea.

Losses or damages to the subject-matter of marine insurance are either partial, general average, or total. Total losses are again divided into two kinds, absolute and constructive. A *partial* loss arises where only partial damage is done to the subject-matter of insurance. In the language of underwriters, a partial loss is called a particular average. Most policies however, contain a clause exempting the insurers from liability for particular average losses, which are below a specified value. A *general average* loss arises whenever a general contribution or general average, as it is called, has to be made between the owners of the ship, freight, and cargo in proportion to their interests, after there has been any sacrifice of property in the course of the voyage, for the general benefit of all. An *absolute total loss* occurs where the subject-matter of the assurance is totally destroyed or annihilated, or is placed by the *perils insured against* in such a position, that it is totally out of the power of the assured or the underwriters, to procure its arrival at the port of destination. A *constructive total loss* arises where some disaster takes place, which renders the restoration of a ship or cargo improbable, and which entitles the assured to claim as for a total loss, on giving due notice of abandonment, as where goods are so much damaged in the course of the voyage, that they would not be worth the cost of forwarding to their destination.

Like other contracts, fraud in regard to any material circumstance will invalidate the contract, and all express or implied warranties by the assured must be observed.

The contract of *master and servant* arises where one person engages to serve another for a recompence. The duration of the contract varies, but it is in general for a year. Although the general presumption in regard to such contracts is, that they are yearly,

there is frequently a usage which makes them terminable on a short notice. Thus the engagements of domestic servants are terminable at any time by the payment of a calendar month's wages or notice for the same period. With regard to commercial travellers, the usual period of notice is three calendar months. In all other cases the period of notice must expire with the current year of hiring. The length of notice required in these cases is in general regulated by the stipulations of the parties, but where there are none a quarter's notice is sufficient. Where the contract of master and servant is for more than a year, or for a year, to commence at a future day, it is required, as we have seen, to be in writing, by the Statute of Frauds.

The contract of master and servant besides being terminable by notice, may also be ended *without notice*, as by mutual consent, the death of the master, or by dismissal of the servant. Wilful disobedience of a lawful command, dishonesty, repeated intoxication, and gross immorality in the master's house, are all good causes of dismissal, and in any of these cases the wages which had not become due before the date of dismissal are forfeited. A servant cannot however, be dismissed for illness.

A *partnership* is an agreement between two or more persons to contribute money, property, services, or skill, to a business to be carried on by them for profit, to be divided (if realized) among them as *principals* in equal or other shares. There may, however, be a partnerships in *profits* only. Thus, if A. agrees to send goods to B. for sale, who is to divide the profits with A. after deduction of the cost and expense of carriage and storage, they are partners in profits. To constitute a partnership the community of profit must be in *net* profits, as the participation in gross profits does not make the receiver a partner.

The partnerships we have described are not only partnerships as between the individuals themselves, but also with regard to third parties. There may however, be a partnership with regard to third parties,

although there is none between the individuals themselves. Thus a person who allows his name to appear to the world as a partner, and a person who as *principal* takes a part of the profits *as such*, are as to *third parties*, partners. Partnerships are either adventure, time, or at will, partnerships. An *adventure* partnership is constituted for one transaction. A *time* partnership has the duration of the contract fixed. In a partnership *at will* no time is specified for the continuance of the contract.

Partnerships may be formed by verbal or written agreement, or by deed. In some cases a partnership will be implied from the conduct of the parties themselves. In all partnerships each partner is considered to have equal authority to bind the partnership in the course of the business. In all partnerships each partner has, from the general principles of law, power to buy and sell goods required for the purposes of the partnership, pledge partnership property, and borrow money on the credit of the firm. Partners in all commercial partnerships are also empowered to draw, indorse, or accept bills, but to no other partnership is such a power incident. A guarantee, unless in the case of bankers, or any similar business, is not considered among the usual powers of a partner.

The rights of partners among themselves are perfect good faith, an interest in the partnership property and profits, and an observance of the terms of the partnership. For breaches of the first or the last of these implied conditions, in every partnership, the usual remedy is by application to the Court of Chancery for an injunction, and for the dissolution of the partnership. In some cases however, the partnership may be dissolved without such application. To a partnership there is always a power incident, by which any of the partners may dissent from any transaction about to be entered into by the other members of the firm; and in such case, if the dissent be communicated to third parties, the dissenting partners will not be bound.

Of the partnership property the partners are joint

tenants, but in the case of the death of any one of them, his interest passes to his personal representatives. Where land is part of the partnership property, it will in equity be considered as personal estate, and be distributed accordingly.

Upon a *dissolution* of a partnership the powers of the partners, except for settling the affairs of the partnership, are at an end. In the settlement of the affairs of a partnership the same good faith between the partners is required as before the dissolution. On the dissolution of a partnership, or the retirement of a partner whose name appears in the firm, notice must be given. Where the partner is a *dormant* one no notice is requisite. To parties who have had transactions with the firm, notice by circular is requisite. With regard to all other parties notice in the "Gazette," and one of the local papers, is all that is necessary. No notice is needed where the dissolution occurs by operation of law, such as death or bankruptcy.

The law of *Principal and Agent* is in many respects analogous to that of master and servant. An *agent* is one employed to do an act for another. Commercial agents are either brokers or factors. Brokers are agents employed to buy or sell, while factors, besides buying or selling, are *entrusted with the property*. Agents are usually paid by a per centage on the value of the business transacted. This per centage is called a commission. Sometimes an agent guarantees the solvency of the purchaser of goods sold by him for his principal, in which case his commission is larger in amount, and called a *del credere* commission.

Agents are again divided into general and special. A *general* agent is one employed to transact all matters relating to a particular business, as an estate agent. A *special* agent is employed for one transaction only. The authority given to an agent will also include everything which is necessarily founded in usage of trade or belonging to that authority. Thus a broker employed to get a bill discounted may, unless otherwise

instructed, indorse it in the name of his principal and bind him by such indorsement.

No agent is empowered to borrow money unless he is the master of a ship, or the acceptor of a bill of exchange for the honour of the drawer.

The principal has a right in general to enforce all contracts made by the agent on his own account, and is entitled to an account of all the transactions between him and the agent. The most important right of the agent as against the principal is to his commission. Sub-agents are only accountable in general to their own employers.

The principal is liable to *third parties* on all acts of the agent which fall within the scope of the employment for which the agent has been engaged, unless the third parties have by their conduct shown that they regarded the agent as the only person liable in the transaction. The liability of a principal to a third party also depends in a great measure on the question whether the agent was a general or special one. If the latter, the principal is not liable where the agent disobeys his instructions.

Where however, the agent is a *general* agent the principal is liable for his acts, although the agent may have exceeded his instructions. Even in the case of a *special* agent the principal will be held liable if the agent is entrusted with the possession of goods and has general powers.

The *Contract of Sale* is an agreement to transfer property from one person to another in consideration of a sum of money. Where one commodity is exchanged for another the transaction is called *barter*.

Sales are either private sales, auction sales, or sales in market overt.

*Private sales* are made by the parties themselves or through their agents. *Sales by auction* are sales in public to the highest bidder. Sales in *market overt* are sales in a legal fair or market. In private or auction sales the seller cannot in general give a better title to the property sold than he has himself. From

the publicity, however, attending sales in *market overt*, the buyer *without notice* of a want of title may obtain a good title against everybody except the owner of stolen chattels who prosecutes the thief to conviction. The sale must however, have taken place on a fair or market day, within the limits of the fair or market, and not within any private room there. Sales of horses in *market overt* must be according to the requirements of the 2 and 3 Ph. and M., c. 7, and 31 Eliz., c. 12; but even if there is a compliance with these statutes the owners of stolen horses may recover them within a limited time, on payment of the price paid by the purchaser.

Contracts of sale are either implied or expressed. An *implied* sale is one which arises from the presumption of law, as where a person orders goods at a shop without any agreement as to price and retains them, or where the buyer keeps goods when sent, which do not comply with the terms of an express contract of sale. *Express* contracts of sale are those which arise from the express agreement of the parties.

Where a contract of sale is for £10 or upwards it is regulated by the 17th section of the Statute of Frauds, which enacts that "No contract for the sale of any goods, wares, or merchandizes, for the price of £10 or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised." *Earnest* is a part of the price. *Acceptance* is a delivery of the goods by the seller, with the intention of vesting the right of possession in the buyer, and an actual receipt of by the latter with the intention of taking to the possession as owner. No particular form of note or memorandum is requisite for compliance with the Statute. The names of the contracting parties, and the terms of the contract must appear on the docu-

ments constituting the contract of sale, and these documents must refer to each other. It is essential to such a contract that where the price has been agreed upon, it should appear on the face of the document, but if no price is mentioned, the law presumes that the buyer intended to pay a reasonable value. The signature must be that of the party to be charged, or of his agent. An auctioneer is the agent of both parties; and his signature of the name of the buyer, in the catalogue, is a sufficient compliance with the statute, if the conditions of sale are annexed to or referred to in the catalogue.

The contract generally provides for the delivery of the goods, but where it is silent, the delivery must be made within a reasonable time. Delivery must be made at a reasonable hour, but if the buyer resides on the premises, the unreasonableness of the hour of delivery will be no defence, if he is able to examine and receive them.

There is, in general, no implied *warranty of title* by the seller of goods, the maxim of law being *caveat emptor*. There is an implied warranty as to the *quality* of goods; 1. Where goods are sold by sample. 2. Where goods are ordered, or are sold to be used for a specific purpose. 3. Where the articles sold are provisions. An *express* warranty is any representation which was intended as a warranty by the seller, and so considered by the buyer. The warranty to be binding must be given at the time of sale. A warranty will not extend to patent defects at the time of sale.

The principal duties of the purchasers of goods are to accept the goods sold and to pay the price. Where the subject-matter of sale was destroyed at the time of sale, although that circumstance was unknown to either the seller or buyer, the former would have to bear the loss. Whenever a contract of sale is silent as to the time of payment, payment will be considered as a condition precedent to the delivery of the goods. It is the duty of the buyer of goods to fetch them, unless it is the custom of trade to deliver them.

In general the property in the articles sold will pass to the buyer, unless the terms show that the parties did not intend to pass the property until something is done by the seller before delivery of possession. Where an article is ordered to be manufactured, the property remains in the seller, unless paid for as the work proceeds.

## OF TORTS.

Any wrong independent of contract, and forming a ground of compensation to the party injured, is a *tort*. A wrong to be a tort must be capable of legal redress. Thus, where a person sinks a well in his own land, and in so doing deprives a spring in adjoining premises of its supply of water, the wrong is not a tort, but what is called *damnum sine injuriâ*, or a wrong without an injury.

From liability on contracts there are, as we have seen, various exemptions, but those do not apply to torts. Thus an infant is liable for a tort. For a tort committed by a married woman, both she and her husband are liable to be sued by the party injured. Where however, the wrongful act is as much a breach of contract as a tort, the liability of an infant or a married woman is only upon the contract, whatever that liability may be. On a similar principle, a married woman or an infant is not liable for any deceit or fraudulent representation whereby a contract is affected. The ratification of a married woman or of an infant, having no greater validity than the act intended to be ratified, they can only be trespassers by themselves, and "not trespassers either by prior command or subsequent assent." Co. Litt. 180 b. note (4) 357 b.

Torts are either to the person, to the reputation, to property, or to rights. Torts to the *person* comprise assaults and batteries, conspiracies, false imprisonments, malicious arrests or prosecutions, and negligence. Torts to *reputation* are libel and slander. Torts to *property* comprise negligence, fraud, infringement of



copyrights and patents, nuisances, conspiracy, wrongful detention of goods, slander of title, obstructions to ways and watercourses, and disturbance of franchises. Torts to *rights* comprise seduction, and enticing servants from a master.

An *assault* is an unlawful attempt otherwise than in jest, to touch or strike a person within reach. A *battery* is the actual touching or striking a person, otherwise than in jest. A *conspiracy* is an agreement by two or more persons, to do an illegal act or to effect a legal purpose by unlawful means. A *false imprisonment* is the compulsory and unlawful deprivation of the personal liberty of any person for a time, be it long or short. A *malicious arrest* is the arrest of a person by the procurement of another, actuated by malice and without probable cause. A *malicious prosecution* is a prosecution instigated by malice, and without probable cause. *Negligence* is the omission to exercise that care which is required by law, under any particular circumstances. To maintain an action for negligence, the damage must not be imputable to mere accident. On the part of the injured person there must also have been no *contributory negligence*, which may be defined to be the omission to exercise that ordinary care by which the negligence of the defendant might have been avoided.

A *libel* may be defined to be "a publication without justification, or lawful excuse, calculated to injure the reputation of another, by exposing him to hatred, contempt, or ridicule." Per Parke B. *Parmiter v. Coupland*, 6 M. and W. 105. Slander comprises any verbal imputation to a person of an indictable offence, or of anything which *might exclude him from society*, any words to the *prejudice* of a person, if spoken of him in the way of *his occupation*, and any words of *disparagement accompanied by special damage*.

*Fraud* consists of "any wilful misrepresentation, or any intentional concealment by the one contracting party of circumstances, material to be known to the other, and which ought in good faith to have been

disclosed or correctly stated." Addison on Contracts. A *nuisance* is any thing which renders the enjoyment of life and property uncomfortable, other than the reasonable use of a lawful trade, or the mere abridgment of pleasure in the enjoyment of property. A *wrongful detention of goods* is any unlawful deprivation of goods from the person entitled to their possession. The property in goods may be general or special. *General property* is the ownership of goods or a right to their absolute possession. *Special property* is a right to the *temporary* possession of goods. Against a wrong-doer however, proof of former possession is sufficient. Thus in a well-known case where a chimney sweeper's boy found a jewel, and took it to a jeweller, who refused to return it, it was held, that though the finder did not acquire an absolute property, yet he had such a property as would enable him to keep it against all but the rightful owner, and consequently that he might maintain trover. *Armory v. Delamirie*, 1 Stra. 505. *Slander of title* to be actionable, must be attended with special damage.

*Seduction* is only ground of an action, where a child has been born, and the father or other relative of the mother of the child has been deprived of any services, which the mother before her confinement, if resident with such relative, was accustomed to render!!

*Enticing of servants* from their masters comprises any inducement made by a person to a servant to leave his master's employment before the expiration of the service, whereby the services of the servant are lost to the master. Some torts are also the subject of criminal proceedings, but this circumstance does not affect the right to compensation. Where the tort is a misdemeanor as an assault, a libel, or a nuisance, an action may be brought, although the defendant may have been or may be also indicted. Where however, the tort is a felony, as embezzlement, the party injured cannot bring an action for compensation until he has prosecuted the offending party.

By the common law upon the death of the party

injured, or of the person by whom a tort was committed, there was no legal redress for torts committed during the life of the deceased. Several exceptions have however been introduced into the rule by statute. These are, that in all cases of *trespass to goods*, the executors or administrators of the party injured may by the 4 Ed. 3. c. 57, bring an action; that actions by executors or administrators for injuries to the real estate of a person deceased, committed within six calendar months before his death, are by 3 and 4 W. 4, c. 42, s. 2, maintainable, if brought within one year after the death of the deceased; and that for torts committed by a deceased person within six months before his death, to the real or personal property of another, actions are by the same statute maintainable against executors or administrators, provided such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person, and the damage to be recovered in such action, shall be payable in like order of administration, as the simple contract debts of such person. Another important exception has also been introduced by Lord Campbell's Act, 9 and 10 Vic. c. 93, declaring that whensoever the death of a person shall be caused by any wrongful act, neglect, or default, which, if death had not ensued would have entitled the party injured to maintain an action, and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, although the death shall have been caused under such circumstances as to amount in law to a felony.

*Redress* for a breach of contract or a tort is effected.

1. By the mere act of the party injured, 2. By the joint act of all the parties. 3. By the mere operation of law. 4. By action.

Redress by *the mere act of the party injured* comprises, 1. Defence of one's self or relations. 2. Recaption of goods. 3. Entry on lands and tenements. 4. Abate-

ment of nuisances. 5. Distress for rent, suit, service, amercements, damage, or divers statuable penalties. 6. Seizure of heriots.

Redress by the *joint act of all the parties* comprises, 1. Accord. 2. Arbitration.

Redress effected by the *mere operation of law* is, 1. In the case of *retainer*; where a creditor is executor or administrator, and is thereupon allowed to retain his own debt. 2. In the case of *remitter*; where one who has a *good* title to land comes into possession by a *bad* one, and is thereupon remitted to his ancient good title, which protects his ill-acquired possession.

An *action* is the legal demand in a Common Law Court of one's right. Actions are either real or personal. *Real actions* are those which claim lands, tenements, or hereditaments, or any of them. The real actions are Dower, Freebench, and Quare Impedit. The subject of a *personal action* is either a breach of contract or a tort. Formerly on the commencement of any action, the writ must have expressed the *form of action*, or the particular legal remedy provided for the subject of the action. This requisite was however, removed by the Common Law Procedure Act, 1852, and forms of action, except with relation to the Statutes of Limitation are now practically unimportant. The forms of action on contracts are Debt, Covenant, and Assumpsit. *Debt* lies whenever a *definite* sum of money is alleged to be due to the plaintiff, either by simple contract or deed, or statutory penalty. *Covenant* lies for the recovery of damages occasioned by a breach of a covenant or promise *under seal*. *Assumpsit* lies for the recovery of damages occasioned by the breach of a simple contract or promise, as those acquainted with Latin will infer from the name.

The forms of action for torts are Trespass, Trespass on the Case, Detinue, and Replevin. *Trespass* is the remedy for any injury which is the *direct* result of a tort. Trespasses are either, 1. To the person. 2. To land. 3. To goods. Trespasses to land are also called trespasses *quare clausum fregit*. Trespasses to goods

are called trespasses *de bonis asportatis*. *Trespass on the case* is the remedy for any injury which is the *indirect* result of a tort. The distinction between trespass and trespass on the case may be readily illustrated. Thus if A. throws a stick at B. with such force as to break his arm, the action maintainable is called trespass, because the injury was the *direct* result of the wrongful act of A. If, on the other hand, A. had left the stick upon the highway, and B. passing along stumbled over the stick, and fell and broke his arm, the action maintainable is called trespass on the case, because the injury was the *indirect* result of the wrongful act of A. One species of trespass on the case is the action of *trover*, which is an action brought for the conversion of goods. A *conversion* is the removal of goods for the purpose of taking them away from the owner, or of exercising dominion or control over them for the benefit of the taker or of some other person. In *detinue* the plaintiff claims and is entitled, if he establish his case, to the specific recovery of goods, chattels, deeds, or writings, *detained* from him by the defendant, with damages for their detention. *Replevin* is an action brought by the owner to try the validity of a distress, or an unlawful taking of goods, which previously to the action are re-delivered to him on his giving the registrar of the county court of the district in which the distress was taken, security forthwith to prosecute the action, and to make a return of the goods should the validity of the distress be established.

## OF ACTIONS.

All actions in the Superior Courts of Common Law, are commenced by writ of summons in a required form, according as the action is one of ejectment or a real or personal action. Personal actions and the action of ejectment may be brought in any of the Superior Courts, but actions for dower, free bench, and in quare impedit must be brought in the Court of Common Pleas. Every writ of ejectment is directed to the

persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which is described in the writ with reasonable certainty, and must be in the form provided by the Common Law Procedure Act, 1852. Every other writ of summons contains the names of all the defendants in the particular action. On every writ of summons there is an intimation requiring the defendant to cause an appearance to be entered for him within a time, which varies according as the writ is one of ejection, or the defendant resides within, or out of the jurisdiction of the Superior Courts. In the first case, the time for appearance is 16 days, in the second 8 days, and in the third, the time for appearance is regulated by the distance from England. On the issue of a writ of summons, a *præcipe* or memorandum of the nature of the writ, and of the names of the parties is left. A copy of the writ is then made. Upon the writ and copy of any writ served for the payment of any debt, an indorsement of the debt and costs is to be made, with a notice, that proceedings will be stayed on payment within four days. Where the writ of summons is in an action of dower, freebench, or quare impedit, an indorsement on the writ must be made, stating that the plaintiff means to declare in the respective action.

In all cases where the defendant is a British subject, service of the writ must be made. Service in general is personal, by delivering a copy of the writ to the defendant, and producing the original, if required by the defendant. Where a defendant is within the jurisdiction of the Superior Courts, and personal service cannot be effected, and proof is given to a Court or judge, that reasonable efforts have been made to effect personal service, and that the defendant knows of and evades service of the writ, the Court or a judge may order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as the Court or judge may seem fit. Where the defendant is a British subject residing out of the

jurisdiction it shall be lawful for the Court or judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction, and that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ,<sup>or</sup> that he is living out of the jurisdiction in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions as to such Court or judge may seem fit, having regard to the time allowed for the defendant being reasonable, and to the other circumstances of the case. The amount of the debt or damages claimed by the plaintiff in the action must, however, be proved by him, either before a jury upon a writ of enquiry, or before one of the masters of the Superior Courts in the manner afterwards provided by the Act, according to the nature of the case, as such Court or judge may direct; and the making such proof shall be a condition precedent to his obtaining judgment. Sec. 18, C. L. P. Act, 1852. (15 and 16 Vic., cap. 76, sec. 18.) Where the defendant is a foreigner residing out of the jurisdiction of the Superior Courts, instead of service of a copy of the writ upon him, a notice stating the issue of the writ, and that he is required to cause an appearance to be entered for him, must be served upon him. Should personal service not be effected liberty to proceed may be obtained upon the same conditions as it is granted in the case of a British subject residing out of the jurisdiction.

Service of the writ, where the defendant is within the jurisdiction, may take place in any county, and where the defendant is out of the jurisdiction service of the writ, or of the notice of the writ, may be effected in any place except Scotland or Ireland. In all cases where the defendant resides within the jurisdiction of the court an indorsement of liquidated

demands may be made upon the writ, and the special indorsement is to stand for particulars of demand. The person serving the writ of summons is required, within three days at least after such service, to indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty in case of non-appearance to proceed.

*Appearance* is an intimation that the defendant intends to resist the action. The mode of appearance is by delivering a memorandum in a required form to the proper officer of the court, and dated on the day of its delivery. Where a writ has been specially endorsed for a debt or liquidated demand final judgment may be signed on default of appearance. Where in an action of ejectment, there has been no appearance entered within the proper time, or an appearance has been entered for part only, the plaintiff is at liberty to sign judgment, that the person whose title is asserted in the writ shall recover possession of the land or of the part thereof to which the defence does not apply. (C. L. P. Act, 1852, sec. 177.) The respective judgment is to be in the form provided by the same section.

After an appearance in any action except ejectment (in which there are no pleadings) the pleadings begin. The system of *pleading* may be described as a process for developing the points in dispute between the parties by mutual written allegations. This object is effected by requiring a statement of the plaintiff's case, and then each party either (1.) to admit as true the preceding allegation of his opponent, but deny that it is in law a ground of action or defence; (2.) to deny such allegation, either wholly or in part; or (3.) to admit such allegation, but show that although it was once ground of action or defence it is no longer so. In the language of pleading the rule may be thus stated: Each party pleading must (1.) demur to, (2.) traverse, or (3.) confess and avoid the preceding pleading of his opponent. In some cases leave to demur to, and to traverse the same pleading will be granted. The rules of pleading treat, (1.) of the facts which need not be



stated; (2.) of the facts which must be stated; (3.) of the manner of stating facts; (4.) of the construction of pleadings.

*Facts which need not be stated* comprise: 1. Mere matter of evidence of any fact alleged in the pleading. 2. Matter of which the court will take judicial notice. 3. Matter which is presumed by law or necessarily implied. 4. Facts which would come more properly from the other side. 5. All statements which need not be proved, such as those specified in sec. 49 of the Common Law Procedure Act, 1852.

*Facts which must be stated* are: 1. The substance of the cause of action or defence. 2. Matter of which the court does *not* take judicial notice. 3. Statements of time, quantity, and value, where these are material. 4. Title or authority.

The *manner of stating facts* should comply with the following rules: 1. The facts should be stated directly and not argumentatively. 2. The facts should be stated with reasonable certainty. 3. The facts should be stated concisely. 4. The facts should be stated so as not to prejudice, embarrass, or delay the opposite party. 5. The facts should be stated with truth.

The two principal rules in the *construction* of pleadings are: 1. Everything shall be taken most strongly against the party pleading, provided that the language has a reasonable construction. 2. After verdict the construction of a pleading must be such as to sustain the verdict.

Pleadings in all actions except replevin are divided into declarations, pleas, replications, rejoinders, surrejoinders, rebutters, surrebutters, and pleadings subsequent to surrebutters. In the action of replevin the pleadings are, declaration, avowry, pleas in bar, and so on. At any stage of the pleadings after the declaration a *demurrer* may occur.

A *declaration* is the statement of the plaintiff's claim, and forms the commencement of the pleadings. Where the appearance is entered in vacation, the plaintiff should declare before the end of the term next after

appearance is entered. If the appearance is entered in term time, the plaintiff has till the end of the following term to declare. The defendant, however, may at any time, except the long vacation, (10th August to 24th October) expedite the proceedings by the service of a written demand of a declaration within four days, unless further time is granted by a judge. Should no further time be granted the defendant may sign judgment of *non. pros.*, should the plaintiff not declare within the four days. The declaration should show all the facts essential to the support of the action, that the plaintiff has performed his part, and where the action is on a simple contract the consideration must also be shown. The performance of conditions precedent may be averred generally. Causes of action of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit, but this shall not extend to replevin or ejectment; and where two or more of the causes of action so joined are local, and arise in different counties, the venue may be laid in either of such counties; but separate trials may be ordered. In any action brought by a man and his wife for an injury done to the wife, in respect to which she is necessarily joined as co-plaintiff, it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if a court or a judge shall think fit. The usual parts of a declaration are: 1. The title of the Court. 2. The date of the declaration. 3. The venue or place where the action is to be tried. 4. The commencement with the name of the plaintiff, and showing whether he sues by attorney or in person, and containing also the name of the defendant. 5. The body or substance of the cause of action. 6. The necessary averments. 7. The damages claimed.

The *venue* which is written in the margin of the declaration varies according as the action is local or transitory. An action is *local* where the cause of action must have happened in a particular place, as where A.

wrongfully cuts down trees on B's. land. An action is *transitory* where the cause of action might have happened anywhere, as a breach of contract. In local actions the venue must be laid in the county or jurisdiction where the cause of action accrued. In transitory actions the venue may be laid anywhere. Bonds, bills, and notes, are said to be *nullius loci*, or with no venue.

Not only after appearance, in any action except ejectment, but also upon default of appearance where the writ was not or could not be specially indorsed, a declaration is requisite. Upon leave obtained to proceed, as if personal service had been effected, where the writ was not specially indorsed, a declaration is also requisite. Where the defendant appears by attorney the declaration is delivered to the attorney, but where he appears in person, it is filed in court.

On the back of the declaration a notice to plead is endorsed. Where on the face of the declaration the facts do not show a cause of action, or different causes of action are joined which cannot by law be joined, or causes of action in different rights are joined, except those by a husband and wife with claims in right of the husband, the defendant should demur. A demurrer confesses all the facts well pleaded. A demurrer is a tender of an issue of law, which must be accepted by the party to whose pleading there is a demurrer, and is afterwards argued before the court.

If, on the other hand, the declaration is not demurrable the defence will be that of a plea. Pleas are either collateral or conclusive. *Collateral* pleas are those which are *not* decisive of the right of action. Conclusive pleas are *decisive* of the right of action. Collateral pleas are divided into: 1. Pleas to the jurisdiction of the court. 2. Pleas in suspension of the action. 3. Pleas in abatement of the suit. A plea to the *jurisdiction* is one which shows that the court has no jurisdiction in the matter. A plea in *suspension* is one which suspends the action for a time. A plea in *abatement* is one which shows that the action is

wrongly brought, and so defeats the particular action, unless an amendment can be made.

*Conclusive* pleas, called also pleas *in bar*, are divided into, 1. The general issue. 2. Special pleas. 3. Equitable pleas. The *general issue* is a general denial that any cause of action ever existed, as in assumpsit: *The defendant did not promise as alleged*; in trespass, and in trespass on the case: *Not Guilty*; in debt upon simple contract, called money counts: *The defendant never was indebted as alleged*; in debt on bond and in covenant: *That the alleged deed is not his deed*.

*Special Pleas* are divided into, 1. Particular traverses. 2. Pleas in confession and avoidance. 3. Estoppels. A *particular traverse* is a plea in denial of any allegation in the declaration. The traverse must be of a material allegation. There cannot be a traverse of mere matter of law, but where the matter of law is connected with fact, it may be traversed. A plea cannot traverse what has not been before alleged, or what is not necessarily implied. Pleas in *confession and avoidance* are those which admit that a right of action once existed, but that in consequence of a subsequent occurrence the right of action no longer exists, as is the case with the plea of payment in an action for goods sold and delivered. An *estoppel* is a special plea where a man has done some act or executed some deed which precludes him from averring anything to the contrary. *Equitable pleas* are those which state facts showing that if judgment were obtained the defendant would be entitled to relief by a perpetual injunction from a Court of equity against such judgment on equitable grounds. The plea must begin with the words, "For defence on equitable grounds," or words to that effect. C. L. P. Act, 1854, sec. 83.

The requisites of a plea are, 1. That it either singly or together with the other pleas answer the whole cause of action alleged in the declaration. 2. That it be so pleaded as to be capable of trial. Several pleas may be pleaded to the same cause of action, but in some cases leave to plead them is requisite. Colla-

teral pleas and estoppels should have their formal commencements and conclusions.

Pleas must be pleaded in the following order: 1. To the jurisdiction. 2. To the disability of the plaintiff. 3. To the disability of the defendant. 4. To the declaration. 5. In bar. Should any plea in a later series be pleaded, it is considered a waiver of the pleas in the earlier series.

A *replication* contains the plaintiff's answer to the defendant's plea. If the plea is one in denial, as the general issue, or a particular traverse, the plaintiff joins issue. If the plea is not one in denial, the plaintiff joins issue, or admitting part of the plea denies the rest, or he denies any one or more of the allegations of the plea. Any subsequent pleading of the plaintiff or the defendant is either a joinder of issue, an admission of part and denial of the rest of the preceding pleading, or a denial of any one or more of the allegations in the preceding pleading. A *rejoinder* is the defendant's answer to the plaintiff's replication. A *surrejoinder* is the answer to the rejoinder. A *rebutter* answers the surrejoinder, and a *surrebutter* the rebutter. Pleadings subsequent to surrebutters have no distinctive names, and from the nature of disputes are rarely required, as generally all the facts which constitute the subject of the claim, defence, or subsequent pleadings, can be alleged in the pleadings long before surrebutters are reached, for there cannot be an inexhaustible supply of facts in dispute between the parties; and therefore, sooner or later a question of fact or of law is developed, which is affirmed on one side, and denied on the other.

The most important rule to be observed with regard to a replication, and any subsequent pleading is that there be no *departure*, which may be defined as a desertion of the ground of action, defence, or answer, which the party originally took. Thus, if in an action of debt on an arbitration bond the defendant pleads *no award*, and the replication sets out the award and

breach, a rejoinder of *performance* of the award is bad on the ground of departure.

In the course of the pleadings in any action, there occasionally occurs a *new assignment*, which is a pleading in the nature of a replication, but reiterating the statements of the declaration in a more explicit manner. It is used whenever from the generality of the declaration, the defendant by his plea mistakes the subject of complaint. To any plea or subsequent pleading, the opposite party should demur if the matter alleged does not constitute a ground of defence or answer, or if it causes a *departure* in pleading.

Previously to the Common Law Procedure Act, 1852, pleadings were also objectionable on the ground of *special demurrer* or defect of form. Since that Act, however, the only demurrer to which pleadings of any kind are subject is a *general demurrer*, where the pleadings are objectionable for defect of substance. *Substance* is a conformity with the essential principles of pleading. Other causes of demurrer to a plea or subsequent pleading than the two we have mentioned, may occasionally occur, but in those cases instead of demurring, the more advisable course is to apply to a judge to set aside the plea, or to cause it to be amended. It is a rule that a plea bad in substance in part, is bad altogether. In the action of ejectment, the issue is in the form provided by the Common Law Procedure Act, 1852. In other actions by the system of pleading as we have seen, an issue of law or of fact sooner or later is developed between the parties. In either case a copy in a required form of the whole of the pleadings between the parties is next made on paper. If the copy consists of issues of fact, it is called the issue, if of law, the demurrer-book. When there shall be a demurrer to part only of the declaration, or subsequent pleadings, those parts only of the declaration, or of the other subsequent pleadings to which such demurrer relates, shall be copied into the demurrer-books. The demurrer is then set down for argument in the special papers, at the request of either party,

four clear days before the day on which the same are to be argued, and notice thereof shall be given forthwith by such party to the opposite party. Four clear days before the day appointed for argument, the plaintiff shall deliver copies of the demurrer-book to the Chief and the Senior Puisne Judge of the court in which the action is brought; and the defendant shall deliver copies to the other two judges of the court, next in seniority; and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default; and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Master a sufficient sum to pay for such copies. If the statement of the points has not been exchanged between the parties, such party shall, in addition to the two copies left by him, deliver also his statement of the points to the other two judges, either by marking the same on the margin of the books delivered or on separate papers. The demurrer is then argued, and decided by the majority of the judges of the court, present at the argument.

Where the issue is one of *fact*, it concludes with the words, "Let a jury come," &c. The issue is next copied on parchment, and then delivered to the proper officer of the court to be entered. The issue when thus copied and delivered to the officer of the court, is called the *record*, and is by him retained until disposed of. Notice of trial is then given. The trial may be either by the record, by certificate, by witnesses, or by jury. The first three modes of trial are of rare occurrence, but the proceedings on such occasions will be found explained in any work on the practice of the Superior Courts of Common Law. Trial by jury is the ordinary mode of trial. The case having been called on, is opened by the plaintiff or his counsel, and the witnesses are examined, cross-examined, and re-examined. At the conclusion of the plaintiff's case, the defendant intimates whether he intends to call witnesses or not. If the latter, the plaintiff is entitled

to sum up the evidence, and then the defendant addresses the jury. If the defendant or his counsel intimates his intention to call witnesses, he states the nature of the defence, and then calls the defendant's witnesses who are examined, cross-examined, and re-examined in the same way as the plaintiff's witnesses. The defendant then sums up the evidence adduced on his side, and the plaintiff replies on the whole case. This is the course adopted where the action is defended. Where the action is *undefended*, the plaintiff has merely to prove the facts which are denied by the pleas. The rules of evidence treat, 1. Of the competency of witnesses. 2. Of written evidence. 3. Of verbal evidence. 4. Of Presumptive evidence.

Nearly every person who had a personal interest in the subject-matter of an action was formerly excluded as a witness. Since the 14 and 15 Vic., c. 99, and the 16 and 17 Vic., c. 83, however, a wiser policy has prevailed and now every person is competent as a witness, except, "First, the parties to any action for breach of promise of marriage; secondly, those persons who in any criminal proceeding are charged with the commission of any indictable offence or any offence punishable on summary conviction, so far at least as relates to their giving evidence on oath either for or against themselves; thirdly, the husbands and wives of all persons who are defendants in any criminal proceeding; fourthly, the wives of co-respondents in suits for dissolution of marriage, or for damages by reason of adultery; fifthly, in cases of high treason, and misprision of treason, other than such as consist in injuring or attempting to injure the Queen's person, those persons who are not included or properly described in the list of witnesses delivered to the defendant pursuant to statutes; and lastly, persons insensible to the obligation of an oath."—Taylor on Evidence, 3rd edition, vol. 2, p. 1090.

Where a person offered as a witness is under fourteen years of age enquiry is usually made as to the degree of understanding which he may possess; and if he



appears to the satisfaction of the judge to have sufficient natural intelligence, and to have been so instructed as to comprehend the nature and effect of an oath he is admitted to testify whatever his age may be. With regard to both written and verbal evidence there is one general rule, that the best evidence of which the nature of the case permits, must be produced. Thus, where a contract has been reduced into writing by the parties, the writing is the best evidence of the contract, and must be produced. The admission of one of the parties is however, primary evidence as against himself, whether it relates to a written contract or not. The proper evidence of all judicial proceedings is the production of the proceedings themselves, or of examined copies of them. The counterpart of a deed is admissible as primary evidence against the party executing it, and those claiming under him. In order to render the production of a writing necessary it must appear to relate to the matter in question. If verbal evidence of an agreement is given at a trial the party desirous of excluding it may ask the witness in cross-examination whether it was not in writing; and may enquire as to the contents of the writing to show that verbal evidence is not admissible. Where, however, a document is lost, and proof is given that diligent search has been made in those quarters in which the primary evidence was likely to be procured, or where the written instrument not being a counterpart, is in the possession of the opposite party, secondary evidence of its contents is admissible after previous proof of a notice to produce the original.

Much of the evidence given on every trial consists of admissions. *Admissions* consist, in general, of any statements, either written or verbal, made by one of the parties to the suit and proved by the opposite party. The party making the admission is however at liberty to prove that such admissions were mistaken or untrue, except in cases of estoppel. Admissions are frequently implied from the acts of the parties. Admissions *on the record* are any statements in a pleading

not denied by the opposite party. The admissions must not however come under the head of *privileged communications*, which are prevented by law from being given in evidence. Thus communications between a husband and wife during the marriage, communications to a legal adviser, the channels of communication in the detection of crime, and secrets of state cannot be disclosed.

*Hearsay*, or a repetition of declarations not upon oath, is in general inadmissible as evidence. In questions of pedigree, to prove public rights, when the hearsay is part of the transaction, and to prove the declarations of witnesses at a former trial, this kind of evidence is however admissible. Entries made by deceased persons in the regular discharge of their duties, and the statements of persons speaking against their own interest are also admissible as hearsay.

Verbal evidence is admissible to vary or contradict a writing unless the matter is collateral to the writing. Verbal evidence is admissible to prove a consideration, the date of a deed or mere words of description not operating by way of estoppel. Verbal evidence is admissible to prove fraud, illegality, or error in written instruments. The rules relating to the admissibility of evidence in the construction of contracts have been mentioned.

Presumptive evidence is either absolute, qualified, or circumstantial. *Absolute* presumptions are those made by law, but do not admit of evidence to the contrary. *Qualified* presumptions are those made by law, but which admit of proof to the contrary. *Circumstantial* presumptions are those drawn by the jury when direct proof of a fact is offered to the jury as probable evidence from which they may infer another fact.

In regard to all evidence the rules are :—The evidence should be confined to the issue. The substance of the issue only need be proved. The rule with regard to the burden of proving the issue is generally stated to be that the party who asserts the affirmative is bound to prove it, except where the

presumption is in favour of it. Where the presumption of law is in favour of the affirmative, as where the issue involves a charge of culpable omission, it is incumbent on the party making the charge to prove it, although he must prove a negative; for the other party shall be presumed innocent until proved to be guilty. It is, however, a rule that where the affirmative is peculiarly within the knowledge of the party charged, the presumption of law in favour of innocence is not allowed to operate, but the general rule applies, viz: that he who asserts the affirmative is to prove it, and not he who avers the negative. In the progress of the trial an amendment of the record may become necessary. On this subject s. 222 of the Common Law Procedure Act, 1852, and s. 96 of the Common Law Procedure Act, 1854, may be consulted. If the plaintiff at the conclusion of his case either thinks that he has not made out his case, or the judge should give him an intimation to that effect, he generally consents to be nonsuited, that is, to abandon the particular action, although he may afterwards bring a fresh action as if there never had been any suit at all. Without any actual non-suit there may be a point of law reserved for the court, or leave reserved to move for a non-suit or verdict. *Bills of exceptions* are used when the judge declines to reserve any point. The withdrawal of a juror occurs when neither party feels sufficiently confident of success to induce him to persevere. Where the matter in dispute between the parties consists either wholly or in part of matter of account, the judge has power to direct arbitration. Occasionally, however, the jury are discharged from finding any verdict, as is the case when a jurymen becomes suddenly ill, or the jury cannot agree upon their verdict.

The verdict is either a general verdict, a general verdict subject to the opinion of the court above on a *special case*, or a special verdict. A *general* verdict merely states for whom the verdict is found, and the amount of the damages. A general verdict subject

to the opinion of the court above on a *special* case, consists of a general verdict of the jury, and their consent to a special case, dictated by the judge and signed by the counsel on each side. A *special* verdict is one which states all the facts of the case as they find them proved, and adds "that they are ignorant in point of law on which side they ought upon these facts to find the issue; that if upon the whole matter the court shall be of opinion that the issue is proved for the plaintiff, they find for the plaintiff accordingly, and assess the damages at £ , but if the court is of an opposite opinion, then *vice versâ*." The verdict when given is afterwards formally drawn upon the back of the record, and is called a *postea*.

The defendant, if upon the trial he obtained leave to do so, may move to *enter a non-suit*; or the plaintiff, upon leave given at the trial may move *to set aside a non-suit* and enter a *verdict for the plaintiff*. A *new trial* may be moved for on the ground of the mis-direction of the jury by the judge, the admission or refusal of evidence contrary to law, that the verdict was against evidence, mis-conduct of the jury, that the damages are excessive or that the verdict is contrary to the weight of evidence.

*Arrest of judgment* may take place for any *error appearing on the face of the record*, which is not capable of amendment. The plaintiff may also move for judgment *non obstante veredicto*, when on examination of the record the matter of defence is groundless. A motion for a *repleader* is made when after issue joined and a verdict thereon, the pleadings are found to have mis-carried. A trial *de novo* or *venire de novo* is a motion for a new trial on the ground of an irregularity or error in the practical course of the proceeding.

To put in force a verdict, a writ of execution is sued out addressed to the sheriff, commanding him according to the nature of the case, either to give the plaintiff possession of the lands or to enforce the delivery of the chattel which was the subject of the action, or to levy for the plaintiff the moneys and costs

recovered by the judgment; or to levy for the defendant his costs: and that either upon the body of the opposite party, his lands, or goods, or in some cases upon his body, lands, and goods. Where execution is not desirable, a judgment creditor may now also obtain the order of a judge for an attachment of debts due to the judgment debtor. The mode of proceeding to obtain this order, and to put it in force when obtained, is regulated by ss. 61 and 67 of the Common Law Procedure Act, 1854, (17 and 18 Vic. cap. 125.) After final judgment is signed, the unsuccessful party may proceed to bring error, which may be either in law or in fact. Any fact which affects the *validity and regularity of the legal proceeding itself*, is error in fact. Whenever upon *examination of the whole record* right appears, on the whole not to have been done, and judgment appears to have been given for one of the parties when it should have been given for the other, this will be *error* in law. Upon error in law in the proceedings of any one of the three superior courts, the court of appellate jurisdiction, is the Court of Exchequer Chamber, consisting of the judges of the two other superior Common Law Courts. Upon the judgment of the Exchequer Chamber, error may be brought in the House of Lords.

In the actions of ejectment and replevin, there are other diversities of practice besides those already mentioned. The proceedings in the actions of dower, free bench, and quare impedit, are by section 27 of the Common Law Procedure Act, 1860, (23 and 24 Vic., c. 126,) to be as nearly as possible similar to the proceedings in an ordinary action, commenced by writ of summons. The two former actions are exceedingly rare, but the action of quare impedit is by no means unfrequent. The details of the proceedings in any action can only however be thoroughly learned from any of the standard books of practice on the subject, as only an outline has been attempted to be given here.

## BOOKS OF REFERENCE ON COMMON LAW.

Archbold's Criminal Pleading, by Welsby.

Best's Law of Evidence.

Broom's Commentaries on the Common Law.

Broom's Legal Maxims. 3rd edition.

Byles on Bills of Exchange.

Chitty on Contracts, by Russell.

Common Law Procedure Acts, 1852, 1854, and 1860.

Dearsly's Criminal Process.

Greaves's Criminal Law Consolidation Acts.

Kerr's Action at Law. 3rd edition.

Paley on Convictions.

Selwyn's Nisi Prius. 12th edition.

Smith's Elementary View of an Action at Law.

——— Law of Contracts, by Malcolm.

——— of Landlord and Tenant.

——— Leading Cases.

——— Compendium of Mercantile Law.

Stephen's Commentaries.

Stephen on Pleading. The last edition.

Story on Agency.

——— Bailments.

Taylor on Evidence. 3rd edition.

Tudor's Leading Cases in Mercantile and Maritime Law.

Warren's Abridgement of Blackstone's Commentaries.

Woodfall's Law of Landlord and Tenant.

## QUESTIONS ON COMMON LAW.

### *Nature of Common Law.*

- 1 Q.—State the principal sources from which our Common Law, according to Blackstone, has been derived; and explain what is meant by the *lex non scripta* as opposed to the *lex scripta*.
- 2 Q.—What is meant by a custom? And what are the qualities specified by Blackstone as essential to its validity?
- 3 Q.—Why is it that contradictory customs cannot be co-existent in the same place? Can you mention any customs which have been held unreasonable.
- 4 Q.—What is the leading case with respect to the admissibility of evidence of a local custom where there is a lease in writing between the parties? And what was the point decided in the case alluded to?
- 5 Q.—Explain what is meant by saying that a custom must have been, and must be “continued,” “reasonable,” and “certain.”
- 6 Q.—Enumerate some of the more important legal rules and doctrines which you consider referable to the Customary or unwritten law.

### *Nature of Statute Law.*

- 7 Q.—Mention the leading rules laid down by Mr. Serjeant Stephen as to the interpretation of statutes.
- 8 Q.—What object had the legislature in passing the Statute of Frauds?

### *Personal Property.*

- 9 Q.—Specify various modes whereby a title to personalty may be acquired under our Law.

Q.—What is meant by the term “Chose in Action”? Can you mention any choses in action which are assignable by statute or otherwise?

Q.—What do you understand by the phrase that “a chose in action is not assignable at law”?

Q.—On what grounds of policy does our Common Law hold a chose in action not assignable?

Q.—State what is requisite that a gift of personalty may be binding *inter vivos*. What is a *donatio mortis causâ*?

Q.—What rule is laid down by Story for determining the right of property after confusion or wrongful intermixture of goods?

Q.—What point was decided in *Miller v. Rose*, with respect to the right of property in a bank note which had been stolen?

Q.—A. picks up a bank note lying on the floor of a shop, and hands it over to B. (the shopkeeper) in order that its owner may be found. B. having failed in discovering the owner, refuses to restore the note on demand. Is B. justified in so doing? Explain the reason of your answer. Suppose that A. had picked up the note in the street, under what circumstances would he, in at once appropriating it to his own use, be criminally liable?

Q.—Specify various acts which when committed by a person who trades within the meaning of the bankrupt laws, are acts of bankruptcy.

Q.—State shortly what rights of action vested in an individual pass in bankruptcy to his assignees.

Q.—In what cases may an uncertificated bankrupt sue?

Q.—Would a grant of goods which are not in existence, or which do not at the time belong to the grantor operate to pass the property in the goods. State fully the law upon this subject, and cite cases in support of your opinion.

Q.—Who is an *executor de son tort*? And when may his act be good as against the true representatives of the deceased?



Q.—*Jus accrescendi inter mercatores locum non habet.* Explain fully the meaning of this rule. Does it apply to the case of a joint tenancy of a chattel?

Q.—What are emblements? A tenant in fee-simple sows land, and then devises the land by will, but dies before harvest time. Shall the devisee or the executors have the corn?

Q.—Under what authority, in what manner, for what purposes, and for what period of time may letters patent be obtained?

Q.—Are letters patent assignable *at law*; and, if so assignable, by what means? Is any additional ceremony necessary?

### *Parties to Contracts.*

Q.—Can an action at law be maintained by an individual member of a corporation against the body corporate. State fully the reasoning upon which your answer is founded.

Q.—What is the foundation of the rule that “a corporation must contract by specialty;” and under what circumstances have exceptions to this rule be sanctioned? Cite cases explanatory of your answer to the latter part of the question.

Q.—A. (a married woman) living separate from her husband and receiving from him a weekly allowance for her support, saved a certain portion thereof, and invested it in the funds in her maiden name. Shortly before her death she sold out the stock thus invested, and handed over the proceeds to C. as a gift. Can B. (A's. husband) recover back from C. the money so paid over to him by action at law?

Q.—Illustrate the meaning of the phrase that “husband and wife are one person in law.” Can you mention cases in which they are not thus considered?

Q.—What is the liability of an infant, first, for necessities; secondly, on a bill of exchange, accepted by him for necessities; thirdly, on a bond with a penalty?

Q.—Is an infant's father in that character liable for his debts? Under what circumstances may he be so?

Q.—Mention circumstances by which an individual's capacity to contract may be affected.

Q.—Is a contract with an alien enemy void or merely voidable?

Q.—Can a contract between a British subject and an alien enemy, not having a license to trade with this country, be enforced on the re-establishment of peace?

Q.—A. B. (a lunatic) contracts for the purchase of an estate from the defendant, and under the contract pays down a deposit, which afterwards by A. B.'s own default becomes forfeited. Can A. B. recover the amount of his deposit from the defendant, the latter party having acted *bonâ fide*, and in ignorance that A. B. was non-compos?

Q.—*Persona conjuncta æquiparatur interesse proprio*. How is the maxim illustrated by Lord Bacon? And what was the point in reference to it decided in *Chapple v. Cooper*, 13 M. and W. 252?

Q.—What was the point decided in *Mayor of Ludlow v. Charlton*, 6 M. and W. 815?

Q.—Mention various incidents peculiar to a Corporation at Common Law.

### *Contracts.*

Q.—Explain the meaning of the word "Contract."

Q.—Into what three classes are contracts divided? Mention the leading characteristics of each class.

Q.—Define what is meant by "an agreement that is not to be performed within the space of one year from the making thereof." (29 Car. II., c. 3. s. 4.)

Q.—To what class of contracts does the 17th section of the Statute of Frauds apply, and what are its provisions?

Q.—What is meant by mutuality in a contract? Mention instances of unilateral contracts.

Q.—To what specific cases does the 4th section of the Statute of Frauds apply?

Q.—Specify three distinct grounds, on any of which a contract may be avoided as illegal, under the *Lex non Scripta*.

Q.—Explain the doctrine of Merger with reference to contracts of record, and by specialty.

Q.—What is an escrow?

Q.—State the peculiarities attending the execution of a deed, and specify the peculiar properties attaching to that instrument.

Q.—State shortly the facts and explain the decision in *Emmens v. Elderton*, 4 H. L. Cases, 624.

50 Q.—What points were resolved in *Blake's case*, 6 Rep. 43, as to the mode of discharging a covenantor from liability on his covenant?

Q.—A man covenants to marry a woman in these terms: "I promise to marry B., and that I will not marry any person but herself. If I do, I agree to pay her £1000 within three months afterwards"—would an action for breach of this covenant be maintainable?

Q.—What do you understand by the terms "Consideration" and "Privity," as used in connexion with contracts, and how do you distinguish between a void and a voidable contract?

Q.—A consideration past and executed will support such a promise only as the law would imply. Explain fully the meaning of this proposition, and illustrate it by decided cases.

Q.—What is it in your opinion which renders binding a contract or agreement, not expressly made so by the Statute Law?

Q.—What is meant by a "moral consideration" for a promise? What seems to be the result of the cases as to the efficiency of such a consideration? Can you mention any of the decisions alluded to?

Q.—Explain what is meant by a *nudum pactum*; what is the rule of law with reference to it, and why has the rule in question been established?

Q.—Mention any exceptions which present themselves to the rule: *Ex nudo pacto non oritur actio*.

Q.—What effect has the 17th section of the Statute

of Frauds on a contract within, but not in accordance with its provisions?

Q.—Distinguish between an executory and an executed consideration. Under what circumstances will the law, the consideration being executed, imply an antecedent request?

Q.—B. and C. jointly owe A. £100; A. agrees to relinquish his claim against B. and C. jointly, and to take in lieu thereof the sole security of B. Is this agreement valid?; or is it void on the ground that there is no consideration moving to A.?

Q.—What points were decided with reference to section 4, of the above statute in *Wain v. Warlters*, 5 East, 10, and *Rydall v. Drummond*, 11 East, 142?

Q.—What is meant by a “continuing” consideration?

Q.—In an action of contract, judgment is had against A. B. and C., (co-defendants) but execution is levied against A. only; has A. in general any, and what redress as against B. and C.?

Q.—A. bargains and sells a horse to B. at B.’s request; what promise on the part of A. would be implied as arising out of this transaction?

Q.—State shortly the rule as to the validity of contracts in restraint of trade. Which is the leading case on this subject?

Q.—What rule has been established applicable to the case where an alteration has been made in a bill of exchange or other instrument without authority from the party sought to be charged upon it? Trace out the law upon this subject, and cite cases in support of your opinion respecting it.

Q.—Specify the ordinary remedies available (1) on a deed; (2) on a contract of record.

Q.—Illustrate the rule that “any man may renounce the benefit of a stipulation introduced in his own favour.” How is this rule qualified in reference to express statutory qualifications?

Q.—Illustrate the proposition that “Fraud vitiates everything.”

Q.—*Volenti non fit injuria*—put cases illustrating

the rule—1st, as it applies to contracts; 2ndly as it applies to torts.

Q.—Explain what is meant by a “concurrent” consideration.

Q.—Distinguish between “moral” and “legal” fraud. Does the former invalidate a contract?

Q.—A. sues for breach of a covenant contained in a composition deed entered into by A. with his creditors, whereby the defendant and others had covenanted to indemnify the plaintiff from all loss in respect of certain acceptances of his, outstanding at the execution of the deed. To this declaration B. (the defendant) pleads that before executing the said indenture, and by way of inducement to execute it, it was agreed between plaintiff and defendant that defendant should receive from the plaintiff a larger per-centage upon debts due to him than the other creditors. Would this, on demurrer, be a good plea?

Q.—How has the law as settled in conformity with *Wain v. Warlters* been altered by 19 and 20 Vic., c. 97, s. 3?

Q.—Blackstone states that, “if a builder promises, and undertakes or assumes to Caius that he will build and cover his house, and fails to do it, Caius has an action on the case (i. e. of assumpsit) against the builder for this breach of his express promise, and shall recover a pecuniary satisfaction for the injury thus caused.” Is this proposition correct? Explain fully the grounds of your opinion.

Q.—Illustrate the maxim: *Unumquodque ligamen dissolvitur eodem ligamine quo ligatur* by reference to the case of a contract under seal which is sought to be discharged, first before; secondly after breach.

Q.—It has been said “that the breach of a contract may be a wrong in respect of which the party injured may sue in case, instead of suing upon the contract.” Illustrate this proposition.

Q.—Give instances of implied contracts, and put cases illustrating the maxim: *Expressum facit cessare tacitum*.

Q.—What were the facts in *Collins v. Blantern*, and what principle is deducible from that case?

Q.—When is interest recoverable, (1) at common law; (2) under the statute 3 and 4 W. 4. c. 42?

Q.—Can you mention any cases as to the divisibility of covenants in restraint of trade?

Q.—Specify cases in which money having been paid by B. for A., the law will imply that there was a request from A. to B. to pay the money.

Q.—Wherein does a “warranty” differ from a “representation”?

Q.—*In contractis tacite insunt quae sunt moris et consuetudinis?* What is the meaning of this maxim?

Q.—A. promises to B. to undertake for him gratuitously the performance of certain duties: before the time arrives for commencing to perform them, A. withdraws from his engagement, in consequence whereof B. sustains damage. Will A. under these circumstances be liable to B. at law?

Q.—What is meant by an Estoppel of Record, by deed, and in Pais?

Q.—What is meant by an “executory”, and show how it differs from an executed simple contract.

Q.—Explain and illustrate by decided cases the elementary proposition that contracting parties must consent *ad idem*.

Q.—Specify certain cases in which parties are required at common law to contract by specialty.

Q.—Explain the proposition that “a mere voluntary courtesy will not support an assumpsit.”

Q.—When may a contract be void as opposed to public policy? What were the facts, and what was the decision upon them with reference to this subject, in *Mitchel v. Reynolds*, 1 P. Williams, 181?

Q.—What was the point decided in *Peter v. Compton*, with reference to the 4th section of the Statute of Frauds? Upon what grounds other than that taken by the court, may the decision in the above case be supported?

Q.—What was the principle in *Laythoarp v. Bryant*, 2 Bing. N. C. 735, with reference to the fourth section of the Statute of Frauds?

Q.—Explain fully the following propositions in regard to simple contracts: (1) In an executory contract, a request is implied: (2) there must be mutuality between the contracting parties; (3) a consideration must move from the promisee to the promiser.

Q.—For what point, arising under the fourth section of the Statute of Frauds, is *Birkmyr v. Darnell*, 1 Smith's L. C. 224, cited as an authority?

Q.—Illustrate the proposition, that a man cannot by his tortious act impose a duty upon another.

Q.—*Assignatus utitur jure auctoris*—specify various exceptions to this rule.

Q.—A bond is executed with a condition, performance of which is, at the date of executing the bond, impossible. Has the instrument any obligatory force? If so, to what extent is it binding?

Q.—What were the facts in *Marriot v. Hampton*? And how was that case decided?

156 Q.—Distinguish between a judgment *in rem*, and a judgment *inter partes*. State shortly on whom a judgment of either species is binding.

Q.—How long may the doctrine of Merger in certain cases affect the right of action?

Q.—A married woman obtains a loan of money under an agreement, that if sued for it, she will not plead her coverture: would such agreement be effectual and binding? Explain the grounds of your answer.

Q.—Suppose that a debt has become barred by the Statute of Limitations, and that the debtor afterwards promises to pay the same "when he is able," would such a promise be binding at law, and under what circumstances?

Q.—What is the rule ordinarily applicable where a plaintiff seeks to recover money which has been paid to the defendant; (1) under a mistake of law; (2) under a mistake of fact?

Q.—Explain the nature of a “public” and of a “private” duty; and show that for the breach of a duty of either kind, producing damage, an action will in general be maintainable.

Q.—Would an action of covenant lie on a contract under seal in restraint of trade made without consideration? Explain the grounds of your opinion.

Q.—*Nemo plus juris ad alium transferre potest quam ipse habet.* Mention certain exceptions to this maxim.

### *Construction of Contracts.*

Q.—Does our constitution recognize the maxim *cujus est interpretari ejus est condere*?

Q.—Where a contract entered into abroad is put in suit in one of our courts, with reference to what law must the contract be expounded, and the remedy upon it enforced? Illustrate by an example the answer to each of these questions.

Q.—Distinguish between a patent and a latent ambiguity. What is Lord Bacon’s maxim with reference to the latter?

Q.—Can a written contract be varied by proof of contemporaneous verbal expressions used by the parties.

Q.—When would parol evidence be admissible to show that the terms of a written contract between A. and B. had been altered?

Q.—Specify states of facts which might be pleaded to an action on a deed, showing it to have been void *ab initio*.

### *Bailments.*

Q.—What is the difference between a pledge or pawn of goods, and a lien; and in what respects does either of them differ from a mortgage?

Q.—Should the consignor or consignee in general sue the carrier for the loss of goods? What is the foundation of the rule upon the above subject?



Q.—Mention shortly in what respects the Carriers' Act (1 W. IV., c. 68.) has affected the liability of common carriers.

Q.—How does Dr. Story define a bailment?

Q.—What degree of care and vigilance is required from a gratuitous bailee, and from a bailee for hire? In what leading case is the law upon the subject specially considered?

Q.—Who is to be deemed a common carrier? What is meant by saying that he is at Common Law an insurer?

Q.—Is a common carrier bound to carry goods for any applicant? Under what circumstances will he be excused from taking charge of them?

Q.—Illustrate the maxim: *Qui sentit commodum debet sentire et onus*.

Q.—Specify three great classes into which bailments are divisible.

Q.—How far is an innkeeper responsible for the safety of goods of a traveller staying at an inn?

Q.—State the facts in *Coggs v. Bernard*, and the point decided in that case.

Q.—A watch is sent to a watchmaker to be repaired, and whilst in his custody is stolen; under what circumstances may the bailee be exonerated from liability to make good its loss?

Q.—What rule does our Common Law take of the case where a bailee of goods, without breaking bulk, fraudulently converts them to his own use? And what change has been made in it by a recent statute?

Q.—Distinguish between a "general" and a "special" lien. In what cases is a general lien allowed at law?

Q.—Define a deposit and a mandate. What is the liability of a mandatory under our common law?

Q.—A. is requested by B. to convey a diamond ring for him (gratuitously) from London to York. A. takes charge of the ring and wears it on his finger during the journey. The ring is stolen from A. while thus in

his possession. Will A. be answerable for it to B.? Cite cases in support of your opinion.

Q.—State shortly the degree of liability attaching to a carrier of passengers at Common Law.

### *Bills of Exchange.*

Q.—Write down the ordinary form of a bill of exchange.

Q.—A. is the drawer, B. the acceptor, C. the payee, and D. the indorsee of a bill of exchange, made payable generally and dishonoured at maturity. With what evidence should D. be prepared in order to sustain an action upon the bill against A., and with what, as against C.?

Q.—Suppose that a banker pays a cheque, the signature of which is forged, who is in general to bear the loss, the banker or the customer?

Q.—Explain shortly how the position of an accommodation acceptor of a bill of exchange differs from that of an acceptor for value.

Q.—If the indorsee or holder of a bill of exchange loses it, how may that circumstance affect his right to sue upon the bill? What is the reason of the rule laid down upon this subject?

Q.—Mention the rule laid down by Mr. Smith, in regard to proof of consideration in an action on a bill of exchange or promissory note.

Q.—A promissory note is made payable to a *feme sole*, who afterwards marries; in whose name or names should an action upon the note, if unpaid at maturity, be brought? Is there any difference when the bill falls due before, and when it falls due after the marriage?

Q.—Has the accommodation acceptor of a bill of exchange who has been obliged to take it up, any and what remedy against the drawer?

Q.—When may the liability of the acceptor of a bill of exchange be said to be (1) satisfied; (2) extinguished; (3) discharged?

Q.—How is the rule *Ex nudo pacto non oritur actio* applicable to a bill of exchange or promissory note?

Q.—What is the meaning of the term “accommodation bill”?

Q.—State the law as settled by recent statutes (19 and 20 Vic., c. 25, and 21 and 22 Vic., c. 79,) having reference to the crossing of a cheque, and the liability which may attach to a banker who pays a crossed cheque.

Q.—When and against whom is notice of the dishonour of a bill of exchange unnecessary?

Q.—Explain the mode of getting execution of a bill of exchange in a summary way. By what statute is such mode of procedure available?

Q.—Write down the ordinary form of a cheque upon a banker, and point out in what respects it differs from an inland bill of exchange.

Q.—Distinguish between—(1) an indorsement in blank; (2) a special indorsement; (3) a restrictive indorsement—of a bill of exchange.

Q.—Specify various ways in which the indorser of a bill may be discharged from liability upon it.

Q.—A. purchases grain of B. in Doncaster market, which is delivered to him and paid for in notes of a bank of issue at York, which is then in good credit. On the next morning, before the notes have been paid away by B., the bank stops payment. State the considerations which would guide you in determining whether A. or B. should bear the loss resulting from the diminished value of the notes.

Q.—Within what time must notice of dishonour of a bill of exchange be given; and to whom?

136 Q.—State the law applicable where a bill of exchange is in some respect altered whilst in the hands of an indorsee.

Q.—A. is the maker, B. the payee, and C. the holder, *bonâ fide*, and for value of a promissory note: in an action by C. against A. on non-payment of the note at its maturity, A. pleads a verbal agreement between himself and B. at the time of making the note,

that it should not be presented for payment unless a condition precedent had been performed by B., and that such condition had not been performed. Would such a plea be good? State fully the grounds of your opinion.

*Bills of Lading.*

Q.—Explain the meaning of the terms “demurrage,” “barratry,” “respondentia,” “general ship.”

*Debt.*

Q.—State the three propositions laid down in the note to *Marriot v. Hampton*, (2 Smith’s L. Cases) relative respectively to money paid, first, with knowledge of the facts; secondly, under a mistake of facts; thirdly, under compulsion of law.

Q.—What is the rule as to the right of contribution amongst co-defendants after judgment recovered against them: (1) in an action of contract; (2) in action of tort?

Q.—What was the principal point decided in *Sibree v. Tripp*, 15 M. and W. 23?

Q.—Explain the nature of the relation subsisting between a banker and his customer in regard to money deposited by the latter in the hands of the former, and illustrate this subject by reference to *Marzetti v. Williams*, 1 B. and Ad. 415, and *Rolin v. Steward*, 14 C. B. 595?

Q.—Put cases showing that a person may sometimes be held liable to repay money disbursed by a stranger without request from him?

*Gift.*

Q.—A. having in his possession plate belonging to B., B. makes a verbal gift thereof to A., who thereupon uses the plate and deals with it as his own. Afterwards

B., revoking his gift to A., sues him in detinue for the plate. Would A. have any defence to such action?

*Guarantees.*

Q.—What kind of promise to answer for the debt, default, or miscarriage of another, is within the fourth section of the statute of frauds, and what was the decision of the Court of Queen's Bench in *Eastwood v Kenyon*, 11 Ad. and E. 438, in regard to this point?

Q.—State fully the alterations effected by the 19 and 20 Vic., c. 97, s. 3, in the law respecting guarantees.

Q.—Mention any leading cases decided with reference to guarantees, and the points of law ruled in them.

*The Law of Landlord and Tenant.*

Q.—A. enters as tenant to B. of 100 acres of land, at a fixed rent, it appears however, that B. has previously demised 10 acres of the land in question to C. Can B. distrain upon A. for rent in arrear? Explain the reason of your answer.

Q.—At what period during the continuance of the tenancy may a good notice to quit be given in the case, first of a yearly; secondly of a monthly; thirdly of a weekly tenancy; there being no special agreement nor usage affecting the rights of the parties.

Q.—Can a watch left with a watchmaker for repair, a carriage standing at livery, or goods sent to an auction mart for sale, under ordinary circumstances be distrained for rent due from the bailee? Upon what principle is the law applicable in each of these cases founded?

Q.—Are the chattels of a lodger or stranger being upon the premises of a lodging housekeeper distrainable for rent, due from the latter party?

Q.—Define what is meant by a distress. If a promissory note be given by a tenant to his landlord on account of rent, will the landlord's rights to distrain

be affected thereby. Explain the grounds of your opinion.

Q.—What repairs is a yearly tenant of a house bound to make in the absence of express stipulation?

Q.—Is a tenant who has covenanted to repair bound to rebuild premises which have been accidentally burnt down? What is the liability of the tenant for rent during the residue of his term?

Q.—State shortly what things are, (1) absolutely; (2) conditionally privileged from being distrained for rent.

Q.—Rent being in arrear, the landlord takes from his tenant a bond as security for it. Is the landlord's right to distrain thereby affected? State fully the ground of your opinion.

Q.—What was the point decided in *Wigglesworth v. Dallison*, 1 Smith's L. C. 300?

Q.—What right has the occupier and owner of the surface of the land, to support as against the owner of the subjacent mineral strata, there being no local custom to regulate the mode of working? Cite cases upon the subject.

Q.—A tenant of land continues to occupy it after the expiration of his lease, without coming to any fresh agreement with his landlord; on what terms will he be taken to hold; and how must any question respecting the admissibility of a local custom as evidence in an action against the tenant for breach of his contract with his landlord be determined?

Q.—What is an "away-going" crop? Suppose that a lease under seal between landlord and tenant contains no stipulation respecting the right thereto, would evidence of a local custom, that the tenant was entitled to it, be admissible?

### *Life Assurance.*

Q.—In what respect does a contract of life assurance fundamentally differ from a contract of insurance against the perils of the sea or against fire?

Q.—State the point decided in *Dalby v. the India and London Life Insurance Company*, 15 C. B., 365, relative to a life policy of insurance, and what earlier decision was overruled in that case.

### *Marine Insurance.*

Q.—*In jure non remota causa sed proxima spectatur.* Explain generally the meaning of this maxim in reference to the law of insurance.

Q.—*Aliud est celare, aliud tacere.* Explain the meaning of this rule in connection with the law of maritime insurance.

Q.—Illustrate the maxim: *In pari delicto potior est conditio possidentis* or *defendentis*, by reference to a policy of insurance.

### *Master and Servant.*

Q.—A. and B. are fellow workmen in the employ of C.; whilst engaged in their duties as such, A. sustains a bodily hurt through the negligence of B.: what rule is here to be applied for determining C.'s liability to damages for the injury done in an action at the suit of A.?

Q.—What point was decided in *Cutter v. Powell* as to the right to wages where a seaman dies during the voyage?

Q.—Specify various species of injuries which, as Serjeant Stephen says, are “incident to the relation between master and servant, and the rights accruing therefrom.”

Q.—Will an action lie against a man for refusing to give his servant a character?

### *Partnership.*

Q.—Distinguish between an active, nominal, and a dormant partner; and state the test applicable in

determining whether an individual is liable as a partner, at the suit of a third person, in a court of law.

Q.—Can two ordinary mercantile firms having a partner in common, sue one another at law? State the reasons of the rule upon this subject.

Q.—In what cases may there be a remedy at law by a partner against his co-partner?

Q.—What is the doctrine of our Common Law as to survivorship *inter mercatores* in regard to (1) the right; (2) the remedy?

Q.—State the several methods by which Joint Stock Companies for trading purposes may be constituted, and show the advantages possessed by any of those methods over the others.

Q.—Subject to what restrictions is each partner in a trading firm to be deemed an accredited agent of the firm?

### *Principal and Agent.*

Q.—What is the general maxim on which the law of principal and agent depends? Give some ordinary illustrations of it.

Q.—Distinguish between a broker and a factor, and explain what is meant by a *del credere* commission.

Q.—State generally the extent of the liability of a factor in respect of damages done to goods placed in his custody, and cite cases in support of your statement of the law upon this subject.

Q.—When a factor sells goods for an undisclosed principal, in whose name may, or must an action be brought for the price of such goods? What is the rule as to set-off applicable in this case?

Q.—What is the maxim of law as to the ratification of a contract? Does it apply also to a tort? Give instances illustrating your opinion.

Q.—What is the rule laid down by Dr. Story, as to the liability of principal and agent, for the price of goods purchased by the latter, on account of the former?



Q.—State any exception to, or limitation of the rule, that “the ratification of a tortious act done by an agent, is equivalent to a prior command.”

Q.—Explain fully, and in what manner an auctioneer ordinarily acts as agent for the vendee, as well as for the vendor of goods, at a sale by auction.

Q.—Distinguish between “a general” and “a particular” agent.

Q.—By applying what test is the authority confided to a general agent to be measured? Explain fully the principle upon which the rule in question rests.

200 Q.—An agent is not in general authorised even in cases of necessity, to borrow money upon the credit of his principal. Mention special exceptions to this rule, and state the reasons upon which they rest.

Q.—Mention cases in which one labouring under an incapacity to contract, may nevertheless contract as agent for another.

Q.—Under what circumstances will an action *ex delicto* be maintainable against an agent contracting as such? Cite cases bearing upon this point.

Q.—The extent of the agent’s authority is (as between his principal and third parties) to be measured by the extent of his usual employment. Illustrate this proposition by examples.

Q.—A. enters into a written contract with B., describing himself as agent for C., at the same time representing, and *bonâ fide* believing that he is duly authorized in that behalf. C. repudiates the contract on the ground that A. had no authority to act for him in that matter. Will B., who is thus damnified, have any remedy, and if so, what form of action against A?

Q.—Specify qualifications of the rule. *Vicarius non habet vicarium.*

Q.—At the time of making a contract of sale, the party buying the goods represented that he was buying them on account of persons resident in Scotland, whose names he did not mention. The seller of the goods did not enquire who the real purchasers were, but afterwards debited the agent who purchased the

goods. Would the vendor upon these facts be precluded from suing the principal for the price of the goods?

Q.—State the facts in *Cornfoot v. Fowke*, 6 M. and W. 358, the decision there arrived at, and your own opinion on the case.

Q.—Note shortly the law applicable for determining the liability of an unremunerated agent, whether in respect of contract or of tort.

Q.—A., a tradesman, has been in the habit of supplying necessities to B., the wife of C., who is abroad. C. dies abroad, and afterwards, but before the fact of his death is known to A. or B., goods are supplied to B. by A. for the use of herself and family, on the credit of C. Will B. be liable for the price of such goods at suit of A.? Will the executors of C. be liable for the price?

Q.—Under what circumstances may a principal who ratifies a tort, become liable in respect of it?

### *Sale.*

Q.—Define the contract of sale. What peculiar efficacy attaches to a sale of goods in market overt?

Q.—How are the requirements of the 17th section of the statute of frauds ordinarily complied with, so that the purchaser of a chattel at a sale by auction may be bound.

Q.—How does an acceptance “differ from an actual receipt” of goods under the Statute of Frauds, sec. 17?

Q.—Specify various exceptions to the rule, that “there is no implied warranty of title in the contract of sale of a personal chattel.” In what recent cases has this rule been discussed?

Q.—Will a warranty of a horse extend to defects patent at the time of sale?

Q.—A. sold a horse without warranty, and delivered it to B. Sometime afterwards, A., at B.’s request, warranted that the horse was free from vice. The horse however proved to be vicious. Would the maxim

*caveat emptor* apply in the case, or could the warranty be considered as incorporated with the original contract of sale? To what decided case is reference made in this question?

Q.—Under what circumstances, and to whom is the privilege of stopping goods *in transitu* allowed, and how may this right be defeated?

Q.—By what considerations would you determine the liability of a member of a club, for the price of goods supplied by a tradesman to the club? Cite cases having reference to this subject.

Q.—How does the rule *caveat emptor* apply as regards (1) the quality of; (2) the title to goods?

Q.—What points respecting the sale of goods were resolved in the Case of Market Overt?

Q.—Explain fully the nature of the difficulty which has been felt in interpreting the following words in the 17th section of the statute of frauds: “except the buyer shall accept part of the goods so sold, and actually receive the same.” What various meanings have been judicially put upon these words?

Q.—Explain the mode of applying the maxim: *Res perit suo domino* by reference to *Tarling v. Baxter*. State the nature of the action in that case, and the facts which appeared in evidence.

Q.—Where a chattel, such as a desk or bureau, sold by public auction, is subsequently found to contain secreted in it valuable property, by what consideration would you determine in whom the property thus discovered is legally vested?

### *Wrongs independent of Contract.*

Q.—Wherein does a tort differ from a contract and from a crime?

Q.—How was the right of action for misrepresentation recognised in *Pasley v. Freeman* affected by the 6th section of Lord Tenterden’s Act (9 G. IV., c. 14)?

Q.—State fully the nature of the action available, and in whose name or names should it be brought to

recover damages for an assault and battery committed on a *feme covert*?

Q.—State shortly the considerations by which you would be guided in determining the liability attaching to the owner of premises, who allows an excavation therein to remain unfenced, in consequence of which damage is caused to the complainant.

Q.—Illustrate the maxim that the law will rather suffer a private mischief than a public inconvenience.

Q.—Does liability attach to a public servant who in obedience to orders from government commits a trespass? Does the rule *respondeat superior* apply in this case? What mode of redress may sometimes be available against the Crown?

Q.—State the facts in *Humphreys v. Brogden*, 12, Q. B. 739, and put additional facts which might have affected the decision in that case.

Q.—*Frustra legis auxilium quaerit qui in legem committit*. Exemplify this maxim.

Q.—Give some of the instances usually put to show the distinction between an action on the case and trespass. Whence did the former form of action derive its origin and nature?

Q.—State what you consider to be the principle point decided in *Scott v. Shepherd*.

Q.—Can you mention any case at all similar to *Ashby v. White*?

Q.—What is meant by a conversion in trover? How may it be evidenced?

Q.—Illustrate the maxim: *Omnia praesumuntur contra spoliatorem*. In what leading case was the principle involved in it applied?

Q.—In what case was the rule “that every man’s house is his castle” particularly discussed, and its limitations laid down?

Q.—Contrast briefly the civil liability of one *non compos mentis* for his tortious act, with the liability which attaches to him for a violation of our Criminal Law.

Q.—Illustrate the maxim : *Sic utere tuo ut alienum non laedas.*

Q.—Is trespass maintainable by an administrator for acts done after the death of the intestate, and before the date of the letters of administration.

Q.—What were the facts in the Six Carpenters' case. 8 Rep. 146? And what was the rule of law there laid down? How has the rule of law referred to in the preceding question been modified, so far as regards distress for rent by the statute 11 G. 2, c. 10, s. 19?

Q.—State shortly the civil liability of an infant *ex delicto*.

Q.—Under what circumstances in an action for "wrong independent of contract," will the intention with which the alleged wrongful act was done be material? And when may it not be so?

Q.—A. by sinking a well on his own land, draws off water from the well of B., his neighbour, whereby he is inconvenienced, and sustains loss. Would an action for damage thus caused be maintainable at the suit of B. against A.? State fully the grounds of your opinion.

Q.—Distinguish between these different kinds of trespass: (1) to the person; (2) *Quare clausum fregit*; (3) *De Bonis asportatis*.

Q.—What is the rule respecting the suspension of a right to sue where the act done whereon such right is founded involves a felony?

Q.—State the nature and extent of the legal liability attaching to the owner of a sunken vessel lying in the channel of a navigable river, towards the owner of a ship, which has sustained damage by coming into collision with the wreck.

Q.—Illustrate the rule that a man must have taken to have intended that which is the necessary or natural consequence of his act in civil proceedings.

Q.—Cite cases illustrating the rule *injuria non excusat injuriam*.

↓ Q.—What is the common law right of the surface

owner to support, as against one working the subjacent mineral strata, in a mining district?

Q.—A Gas Company employs competent workmen to repair the gas-pipes laid down in a public thoroughfare, omitting however to give any specific directions in regard to the precautions which should be taken to prevent accidents to passers by. One of the workmen while engaged in doing the necessary repairs, by his negligence, causes an individual, lawfully using the thoroughfare. Will the company be liable to make compensation to the party injured?

Q.—Will an action lie against a witness who maliciously gives false evidence at a civil trial, to the detriment of another?

Q.—State facts which might afford ground for an action, (1) of trover; (2) of detinue; (3) on the case.

Q.—A. falsely and fraudulently represents to B. that he (A) is authorized by C. to order goods on his (C.'s) account. The goods are accordingly supplied to A., and C. who declines to pay for them, is unsuccessfully sued by B. for their price. Explain the nature of the action, which under these circumstances would lie at the suit of B. against A., and what damages would be recoverable in it?

Q.—A. erects upon B.'s land a house without license so to do from B. Will B. be justified in entering the house by force, A. and his family being in it, and expelling them? Specify the leading cases which bear upon this question.

Q.—What do you understand by the phrase *Damnum sine injuria* and *Injuria sine damno*? Show how they are usually applied.

Q.—What is the doctrine of our law as to “contributory negligence.” Cite cases in illustration of it.

Q.—A surgeon undertakes gratuitously to attend a sick person, and injures him by improper treatment. Explain fully the law here applicable for determining the civil liability of the surgeon.

Q.—A. having at B.'s request consented to allow his horse to pasture gratuitously with A.'s horse, puts

them together for the night time in a field, the fences of which are defective; B.'s horse during the night falls through a gap in the fence, into an adjoining field, and is killed. Is A. liable to B. for the damage thus sustained by him?

Q.—Put cases illustrating the meaning of *par delictum* in *in pari delicto potior est conditio defendentis*.

Q.—State shortly the civil liability of one who finding lost property, appropriates it to his own use.

Q.—What is the presumption of law as to the property of a tree which grows on the boundary of two fields, so that its roots extend into the soil of each?

Q.—Define the nature of “a legal injury.”

Q.—What is meant by saying that damage is “too remote to be the subject of an action”? Cite cases in illustration of the rule. How do you reconcile the decision in *Scott v. Shepherd* with the rule as to remoteness of damage.

Q.—What was the point decided in *Hooper v. Lane* as to the liability of the sheriff?

Q.—Put various cases in which (1) an assault and battery; (2) an entry on the land of another without license from him, may be justified.

Q.—Wherein does an action for false imprisonment differ from an action for a malicious arrest?

Q.—What are the ingredients in the right of action for a malicious prosecution, and what are the respective functions of the judge and jury in such an action?

Q.—A., a gamekeeper employed by B. to kill game, shoots so carelessly as to injure C. whilst lawfully passing along the adjacent highway. Explain the nature of the remedy available to C., in order to obtain compensation for the hurt sustained, and state against whom it may be had.

Q.—What must appear upon the evidence in an action of trover, in order that the plaintiff may be entitled to the verdict?

Q.—In an action for libel what communications are

deemed to be privileged? How may the defence of "privileged communication" be raised?

Q.—Distinguish between a misfeasance and non-feasance, and exemplify the proposition that an action of tort may lie for a non-feasance causing damage to the complainant.

Q.—A. (the wife of B.) falsely and fraudulently represents to C. that a certain bill of exchange, purporting to be accepted by B.<sup>3</sup> had been accepted by him; in consequence of which misrepresentation, C. sustains pecuniary damage. Would an action lie at suit of C. against A. or B., or both jointly, upon the above facts? What is the peculiar difficulty in the case?

Q.—D. (the agent of E.) by fraudulently affirming to F. (a customer) that certain timber belonging to E. is sound, induces F. to purchase it. E. was ignorant of the defective condition of the timber, and had in no way authorized D. to sell it as sound. Would an action *ex delicto* be maintainable upon these facts at the suit of F., who has paid for the timber more than it was worth, against E.?

Q.—Suppose that A. (in the last question but one) had obtained an advance of money to her own use on the bill of exchange which purported to bear B.'s acceptance, could she have been indicted for obtaining the money by false pretences?

Q.—How was the maxim, "Where there is a right, there is a remedy" exemplified in *Ashby v. White*.

Q.—In an action against a Railway Company for negligence and damage thence resulting, would it suffice for the plaintiff to prove that an accident had occurred in order to throw the *onus probandi* on the defendants?

Q.—For the benefit of what persons only can an action be brought under Lord Campbell's Act, (9 and 10 Vic., c. 93) for compensation in cases of death caused by negligence?

Q.—Mention three distinct classes of cases in which



an action for slander will lie without proof of special damage.

Q.—Illustrate the distinction between absolute and special property by reference to *Armory v. Delamirie*.

Q.—Put states of facts out of which might arise a right to sue *ex delicto* or to proceed by indictment.

Q.—What were the facts in *Barnes v. Ward*, and what was the decision upon them?

### *Redress by act of Party.*

Q.—Mention various modes in which a civil injury may be redressed by the mere act of the party aggrieved.

Q.—Specify cases in which a nuisance may be abated by a private person.

Q.—A flock of sheep, being driven along a highway pass on to a line of railway, through a gate (which is under the control of the railway company) and sustain damage from a train; supply additional facts for determining the liability, if any, attaching to the company.

### *Process.*

Q.—To what points must attention usually be directed before issuing the writ of summons?

Q.—State shortly the purport of an ordinary writ of summons. How must it be served?

Q.—State the proper mode of proceeding by action against a British subject out of the jurisdiction.

Q.—Under what circumstances, and how may a writ of *capias* be issued on mesne process.

Q.—How long does the writ of summons issued in pursuance of the Common Law Procedure Act, 1852, continue in force? How may it be renewed? Under what circumstances may a renewal be necessary? And what is the proper course to take when a defendant evades service of a writ?

Q.—What is meant by the common indorsement of debt and costs? When and why is this required?

Q.—Explain what is meant by a special endorsement of the writ of summons, and what is the advantage to be derived from specially indorsing the writ?

Q.—Explain the distinction between a local and a transitory action. Is the distinction still retained?

Q.—What is a “concurrent” writ of summons, and under what circumstances may it be practically useful?

Q.—State shortly the mode of entering an appearance to an action.

Q.—What course should be adopted by a plaintiff in case of the defendant’s non-appearance; (1) where the writ of summons is specially indorsed; (2) where it is not so indorsed?

Q.—State shortly the nature of the proceedings in an action for a *mandamus* under the Common Law Procedure Act, 1854.

Q.—In what cases may the writ of injunction be claimed at common law?

Q.—How may a non-joinder of plaintiffs be amended before trial?

Q.—Explain the change effected by the Common Law Procedure Act, as regards the consequence of a mis-joinder of plaintiffs in an action.

Q.—Would an action lie in one of our Superior Courts; (1) on a bill of exchange accepted and made payable in France; (2) for an assault and battery there committed; (3) for land there situated?

Q.—How may a misjoinder of defendants in an action be cured under the Common Law Procedure Act, 1852?

Q.—What was the former, and what is the present rule as to the joinder of causes of action in the same suit?

Q.—Can you mention any statute passed since the Common Law Procedure Act, 1852, the mode of procedure under which is analogous to the special endorsement on the writ?

Q.—Enumerate cases in which the County Court has concurrent jurisdiction with a Superior Court.

Q.—In what cases must notice of special defence be given in a suit in the County Court?

Q.—State what is meant by a "Court of Record." What liabilities may attach to the judge of such a court for an act done by him?

Q.—How is an action to be commenced against a foreigner residing out of the jurisdiction of our Courts?

Q.—Where may the writ of summons in an action be served?

Q.—State the period of limitation in an action of (1) detinue; (2) trover; (3) trespass for assault; (4) case for slander.

Q.—Upon what policy are the various statutes of limitation founded? What is the period of limitation in each form of action *ex contractu*?

Q.—Specify the remedies available at law (1) upon a judgment recovered; (2) upon a contract under seal; (3) upon a simple contract.

Q.—How may the specific delivery of a chattel in some cases be compelled?

Q.—In what name or names may an action be brought upon a claim arising to a married woman during coverture?

Q.—In what classes of cases might an action of contract or an action of tort be available at the option of the complainant?

Q.—How is the maxim: "*Interest reipublicae ut sit finis litium*," illustrated by the case of *Marriott v. Hampton*?

Q.—State what you understand by the maxim: "*Debitum et contractus sunt nullius loci*."

Q.—What is meant by saying that damage is "too remote" to be the subject of an action? How do you reconcile the decision in *Scott v. Shepherd*, with the rule as to remoteness of damage?

Q.—Distinguish between an action for the direct invasion of a legal right vested in the plaintiff, and

an action for a breach of a legal duty owing to him which causes damage?

Q.—Would proof of special damage be requisite to sustain an action; (1) for libel; (2) for slander on plaintiff, touching his profession; (3) for a malicious prosecution?

Q.—What remedy may the subject sometimes have against the Crown, and under what circumstances may it be available?

Q.—A. contracts with B. to sell and deliver to him specific goods on a future day, prior to which, however, A. sells and delivers the goods to C. Would it be competent to B. to sue A. for breach of contract before the day named for the delivery of the goods? Cite cases in support of your opinion.

Q.—What is meant by a “prerogative” writ? Enumerate the various prerogative writs which issue out of Courts of Common Law.

### *Pleadings.*

Q.—After what period from the service of a writ of summons may the plaintiff be compelled to declare; and what steps must the defendant take in order to compel him?

Q.—What change has been effected by the Common Law Procedure Act, as regards the statement of promises in a declaration founded upon contract?

Q.—Put cases in which the venue is—(1) local—(2) transitory.

Q.—What is meant by “a condition precedent”; and what change has been effected by the Common Law Procedure Act in reference to its performance in pleading?

Q.—What would be the main ingredients in the right of action upon facts such as those in *Chandelor v. Lopez*; first, if the declaration were framed in contract; secondly, if it were founded in tort?

Q.—How does a demurrer differ from a plea?

Q.—By what considerations should a pleader be governed in determining whether to demur or to plead to the plaintiff's declaration?

Q.—Within what time must a defendant demur to the plaintiff's declaration?

Q.—Is it competent to a party to plead and demur to the same pleading?

Q.—What is the recognised classification of pleas? Give an instance characteristic of each of the leading classes of pleas.

Q.—Explain the meaning of the following terms used in pleading: "traverse," "departure," "new assignment," "duplicity," and "argumentativeness."

Q.—Mention some of the ordinary pleas in an action of covenant or assumpsit.

Q.—By the 8th pleading rule in actions on contract, "all matters in confession and avoidance including not only those by way of discharge, but those which show the transaction either void or voidable in point of law, shall be specially pleaded." Enumerate various defences which must be specially pleaded under the above rule.

Q.—Can fraud be pleaded as a defence in an action upon a judgment of a court of record, and upon a deed?

Q.—What is the ordinary time for pleading in bar to an action, the defendant being within the jurisdiction, and in abatement?

Q.—When is coverture pleadable in bar, when in abatement, to a declaration for goods sold and delivered?

Q.—What is meant by an equitable plea? Is such a plea pleadable in ejectment?

Q.—State shortly the nature of the following pleas, and say in what actions they may be pleaded. Set off, payment into court, *Nil habuit in tenementis*.

Q.—What was decided in the Duchess of Kingston's case as to the doctrine of estoppel?

Q.—How is illegality to be pleaded in an action

*ex contractu*? Upon what authority is your answer founded?

Q.—Of what does the plea of “Not Guilty” operate as a denial, and what is the effect of the plea of non-assumpsit in an action against a carrier for non-delivery of goods?

Q.—State any limitations as defined in recent decisions of the statutory provisions allowing equitable defences to be pleaded.

Q.—What is meant by a plea *puis darrein continuance*?

Explain the nature of the pleas *solvit ad diem* and *solvit post diem* in an action on a bond. Under what statute is the latter of those pleas pleadable?

Q.—What do you understand by a plea of “accord and satisfaction”?

Q.—What is put in issue by pleading “non-assumpsit” to a declaration on a special contract?

Q.—What provision is contained in the Common Law Procedure Act, 1854, having reference to an action upon a bill of exchange or other negotiable instrument which has been lost?

3. Q.—What is the ordinary time for pleading in reply?

Q.—To the attainment of what object is our system of pleading mainly directed? Illustrate your answer by examples?

Q.—Can judgment *without* satisfaction, recovered against one of two joint debtors, be successfully pleaded in bar of an action against the other contracting party?

### *Trial and Evidence.*

Q.—What is the usual time for notice of trial; and what is meant by short notice?

Q.—Why and with what special object is a notice to produce or admit documents given?

Q.—State the best and simplest tests available for determining upon whom at the trial of an action the

burden of proof lies; and the reasons on which the rule is founded.

Q.—Give illustrations of the rule that the best evidence of which a case in its nature is susceptible should be presented to the jury.

Q.—On what grounds is hearsay evidence in general inadmissible?

Q.—What was the point decided in *Doe d. Tatham v. Wright* (7 Ad. and E., S. C. 5, Cl. and Fin., 670) as to the admissibility in evidence of letters addressed to a person whose sanity was in question?

Q.—What important point connected with the rule as to the admissibility in evidence of entries against interest was decided in *Higham v. Ridgway*, 10 East 109?

Q.—*Omnia praesumuntur rite esse acta*. Illustrate this maxim of our law of evidence.

Q.—What important point connected with the law of evidence was ruled in *Carter v. Boehm*, 3 Burr., 1905; and has since been much agitated?

Q.—What is meant by *res inter alios acta*? Give instances showing what is the rule of evidence with reference to it.

Q.—*Contra non volentem nulla currit praescriptio*. Explain and illustrate this rule.

Q.—Under what circumstances are entries made by deceased persons admissible in evidence? To what rule does their admissibility offer an exception, and upon what grounds has it been established?

Q.—*Res judicata pro veritate accipitur*. What is the meaning of this rule? Is there any exception to it?

Q.—What particular point connected with the law of evidence was decided in *Price v. Earl of Torington*, 1 Salk. 285?

Q.—In what manner does a receipt operate in evidence: (1) when under seal; (2) when not under seal?

Q.—Distinguish between a presumption of law, and a presumption of fact.

Q.—Specify presumptions of law which are conclusive, and which may be rebutted.

Q.—What are the principal grounds of objection to the competency of witnesses?

Q.—Is a wife a competent witness for or against her husband: (1) In a civil action; (2) In a criminal proceeding? State the limitations (if any) imposed on her competency.

Q.—State the point decided in *Goss v. Lord Nugent*, 5 B. and Ad. What important point was raised in the case as to the fourth section of the Statute of Frauds, but not formally decided?

Q.—What is the extent of the limit of the rule that “evidence of usage or custom is admissible to explain a written contract?”

Q.—Specify some matters which are judicially noticed without proof.

Q.—Indicate various classes of questions which a witness at *Nisi Prius* would not be held compellable to answer.

Q.—Specify the respective functions of judge and jury when a question arises whether a communication was privileged or not, or whether articles supplied to an infant are necessities.

Q.—How may evidence of an act or declaration, not otherwise admissible, sometimes be so as forming part of the *res gestae*.

Q.—State the four general rules laid down by Mr. Taylor as governing the production of evidence to a jury.

Q.—Could the want of jurisdiction in a Superior Court be waived by the parties? What is meant by an agreement to oust the jurisdiction of the Courts? Would such agreement be valid?

Q.—Explain what is meant by a leading question?

Q.—What important rule, in regard to the admissibility of evidence, was settled in *Omichund v. Barker*, Willes, 538?

Q.—*Cuilibet in sua arte credendum est*. Illustrate this maxim.



Q.—Specify the various modes of proceeding available against a witness who fails to attend, and give evidence at a civil trial, having been subpoenaed so to do.

Q.—How may it be material to distinguish between contract and tort, as regards the right of a plaintiff to his costs when suing in a Superior Court?

Q.—Mention various kinds of hearsay evidence which are admissible by our law.

Q.—*Semper in obscuris quod minimum est sequimur.* Illustrate this maxim by reference to the law of evidence.

Q.—In what qualified sense must the rule be understood that “a negative is incapable of proof”?

Q.—C., by excavating in his own land near to its boundary, causes the downfall of D's ancient house erected in adjoining land, and when sued in case for this injury pleads the Statute of Limitations. It appears in evidence that the excavation was made more than six years before the commencement of the action, but that the damage accrued within that period. For whom should the verdict be entered?

Q.—How may a non-joinder of plaintiffs be amended at the trial?

Q.—In an action by indorsee against acceptor of a bill of exchange, the defendant pleads that the bill was accepted by him for the accommodation of the drawer, and was indorsed to the plaintiff without value. To this plea the plaintiff replies that the bill was indorsed to him for a valuable consideration. On which party does the *onus probandi* lie? Explain fully the grounds of your answer.

Q.—What threefold duty devolves upon a judge presiding at a trial by jury?

Q.—Illustrate the respective functions of the judge and jury by reference to an action for goods sold and delivered. Plea—infancy. Replication—that the goods were “necessaries.”

Q.—How may the attendance of witnesses be com-

pelled—(1) before a Justice of the Peace; (2) at Nisi Prius?

Q.—What is the true measure of damages in an action against the sheriff for an escape?

### *Judgment and Execution.*

Q.—What is the ordinary writ of execution; first, against the person; second, against the goods? and how long, if unexecuted, does it remain in force?

Q.—State shortly the nature of the writ: *haberi facias possessionem*.

Q.—How may judgment be signed in an action for non-appearance where the writ of summons was not specially indorsed?

Q.—Illustrate the doctrine of estoppel by reference, (1) to the judgment of a Court of Record, (2) to a bond, (3) to a bill of exchange.

Q.—In what cases may a sheriff execute a writ by breaking open the outer door of a dwelling house?

### *Proceedings subsequent to Judgment.*

415 Q.—Specify various grounds on which the motion for a new trial is ordinarily made.

Q.—How have proceedings in arrest of judgment been affected by the Common Law Procedure Act. State the proceedings which may be had on this motion.

### *Other proceedings in the Superior Courts.*

Q.—What is the office of a writ of certiorari?

Q.—Give a sketch of the proceedings in *Replevin*. Under what various and dissimilar circumstances may this action be maintained?

## *NATURE OF CRIMINAL LAW.*

Q.—What is the main object of the statute 14 and 15 Vic., c. 100, intituled “An Act for further improving

the Administration of Criminal Justice," as set forth in the preamble thereto?

Q.—Give a definition of an "indictment," and state what test you would apply for determining whether a particular wrongful act is indictable or actionable. Under what circumstances may an act done give rise as well to an indictment as to an action?

Q.—State concisely the peculiar office of the grand jury, of the common jury, and of a judge on a criminal trial.

Q.—What is the peculiar characteristic of a felony at common law, as distinguished from a misdemeanor?

Q.—In what various ways may the capacity to commit a crime be affected?

Q.—State shortly the mode of procedure by criminal information.

Q.—In what various ways may the capacity to commit a crime be affected?

Q.—Define what is meant by a "crime" and "a criminal act."

Q.—Distinguish between "motive," "intention," and "attempt," in connection with criminal law.

Q.—Does our law regard drunkenness as a defence in answer to a criminal charge? Put various states of facts illustrating the view which you entertain upon this subject.

Q.—"*Ignorantia juris quod quisque scire tenetur neminem excusat.*" Explain and illustrate this rule by reference to our criminal law.

Q.—Under what circumstances may a right of action be said to merge in a felony?

Q.—How does the rule "*Nullum tempus occurrit regi*" apply in reference to the procedure by indictment?

Q.—Wherein does a criminal information differ from an indictment?

Q.—Illustrate the maxim "*Nemo tenetur prodere seipsum.*"

Q.—Blackstone lays down (4 Com. p. 21), that to constitute a crime against human laws, there must be; "first, a vicious will; and secondly, an unlawful act

consequent upon such vicious will." Put cases in which the will does not join with the act so as to make the individual doing it punishable.

Q.—Specify the rules of law applicable for determining the criminal liability of an infant under the age of twenty-one.

Q.—Put cases showing that a person whilst out of the jurisdiction of our court, may so act as to be amenable on a criminal charge when brought within it.

Q.—Refer the undermentioned offences respectively to the class of felonies, or that of misdemeanors: perjury, larceny, the obtaining of money by false pretences, and forgery at common law.

Q.—Put cases showing that an attempt to commit a misdemeanor may be indictable. Put cases also in which it would not be so, or in which there could not in strictness, be an attempt to commit a specific offence.

Q.—Explain fully the various modes in which criminal proceedings may be commenced against one who is suspected to have committed a crime.

Q.—State fully the rule of our law in regard to the criminal responsibility of a feme covert.

Q.—Suggest some test available for determining whether a criminal prosecution may lawfully be compromised.

Q.—Distinguish between an indictable fraud and one which is merely actionable.

Q.—A. is a manufacturer of fireworks, and keeps on his premises a stock of gunpowder and combustibles, contrary to Act of parliament. During A.'s absence from home, through the negligence of his servants, the combustibles ignite, and a firework exploding causes the death of a person passing near to the premises. Could A. be indicted upon these facts? If so, for what offence?

### *Burglary.*

Q.—Define the offence of burglary.

Q.—By what evidence will the words “break and enter” in an indictment for burglary be satisfied?

### *Conspiracy.*

Q.—Define the offence of conspiracy. Is it a felony or misdemeanor? And give instances of conspiracies which would be indictable.

### *Embezzlement.*

Q.—Wherein does the offence of embezzlement differ from that of a larceny by a servant? What test is applicable for determining between the offences.

### *False Pretences.*

Q.—Explain the nature of the offence of obtaining goods or money by false pretences. Mention tests for determining what is a false pretence within the statute.

Q.—E., by falsely representing that he was a naval officer, induced F. to enter into a contract to provide him with board and lodging at so much per week, and in pursuance of such contract E. was supplied with food. Could E. be convicted under the statute of obtaining the articles of food, thus supplied to him, by false pretences? Explain fully the grounds of your opinion upon this case.

Q.—If on the trial of a person for the statutory offence of obtaining goods by false pretences, it be proved that he obtained the property in such manner as to amount in law to a larceny, what verdict should be given?

Q.—A. offers a chain in pledge to B. (a pawnbroker) falsely and fraudulently stating that it is a silver chain, whereas, in fact, it is not silver. B. tests the chain, and relying entirely on his test and examination, advances money to A. upon the chain. Can A. be convicted upon this evidence of obtaining the money advanced, by false pretences? Explain fully the grounds of your opinion.

*Housebreaking.*

Q.—Define the offence of housebreaking.

*Larceny.*

Q.—Define the offence of larceny at Common Law, and explain in what manner the statute 20 and 21 Vic., c. 54, (The Fraudulent Trustees Act) has altered the law concerning larceny.

Q.—Specify various things whereof larceny cannot be committed at common law.

Q.—Is it in your opinion necessary to show a taking *luori causâ* in order to sustain an indictment for larceny. Cite cases bearing upon this point.

Q.—What do you understand by the phrase “larceny includes a trespass.”

Q.—Under what circumstances is the finder of lost property, who appropriates it to his own use, guilty of larceny? Can you mention any recent case upon the subject?

Q.—What were the facts, and what was the decision upon them in *Reg. v. Thurborn*, 1 Den., C. C. 387, in *Reg. v. Preston*, 2 Den., C. C. 353, and in *Merry v. Green*, 7 M. and W., 623?

Q.—A. *bonâ fide* hires a horse for a particular purpose, and when that purpose has been accomplished, wrongfully sells the horse and receives the proceeds of the sale. Is A. indictable for larceny? Explain fully the grounds of your answer.

Q.—A., the servant of B., is sent with his master's cart to fetch coals from the wharf of a coal merchant with whom B. has dealings. A. returning with the coals placed in his master's cart, wrongfully disposes of them for his own profit. Is he guilty of larceny in so doing? What is the peculiar difficulty in this case?

Q.—What is the rule as to “Election” at the trial of an indictment for larceny: the indictment containing one count only, and the property appearing to have been stolen at different times?

Q.—Illustrate the meaning of the phrase a taking “*animo furandi*.”

Q.—State circumstances which might dispense with proof of the *corpus delicti* on a trial for larceny.

Q.—Explain the maxim: *Furtum non est ubi initium habet detentionis per dominum rei?*

43 Q.—Under what circumstances will a feme covert indicted for larceny be entitled to an acquittal, although proved to have taken the goods laid in the indictment *animo furandi*.

Q.—How is the offence specifically charged in an indictment for larceny?

Q.—Distinguish briefly the offence of larceny from that of obtaining goods or money by false pretences.

Q.—State fully the reasoning on which it has been held that a wrongful taking, coupled with a subsequent felonious appropriation of property will constitute the offence of larceny.

Q.—In what does a “taking” differ from an “asportation” in the definition of larceny?

Q.—A. finds in the secret drawer of a bureau purchased by him at a sale by auction, a purse of money, which he appropriates to his own use. Under what circumstances would he be guilty of larceny in so doing?

Q.—Evidence of a continuing trespass in reference to a chattel taken without any *animo furandi*, and of a subsequent felonious appropriation of such chattels by the trespasser has been held sufficient to support an indictment for larceny. Explain the grounds of the decision here referred to, and cite the case in which the point above specified arose.

Q.—What point was decided in *Reg v. Riley, Dears*, 149, in regard to the law of larceny? What were the facts appearing in that case?

Q.—A. is indicted for simple larceny; the evidence for the prosecution shows, that he had fraudulently converted to his own use, property of which he was bailee, without however breaking bulk or otherwise,

determining the bailment. Can A. be convicted upon this indictment, and if so, of what offence?

### *Libel.*

Q.—What important alterations in the criminal law concerning libel were effected by Lord Campbell's Act, (6 and 7 Vic., c. 96)?

Q.—State the various modes of procedure, civil or criminal, available for libel.

Q.—Explain how the *onus probandi* may be shifted from the one party to the other, on the trial of an indictment for libel.

### *Manslaughter and Murder.*

Q.—How is the offence of manslaughter to be distinguished from murder? Put cases illustrating the distinction.

Q.—Give a definition of excusable and justifiable homicide, and give an instance of each of those species of homicide.

Q.—Give instances explanatory of the expression "Malice aforethought" which occurs in the definition of murder.

Q.—A. assaults C. with malice aforethought. B. (A.'s servant) in ignorance of the felonious design aids in the assault which results in the death of C. Upon these facts what degree of guilt attaches to A. and to B.?

Q.—State the facts in Mackalley's case, 9 Rep. 61, and draw therefrom such deductions as may appear to be sustainable.

Q.—Explain fully why it is that on an indictment for murder the jury may convict of manslaughter. Can you mention the case in Coke's Reports wherein this point was discussed.

Q.—A workman throwing down rubbish from a house-top killing a person passing underneath, may, according to circumstances, be guilty of murder, manslaughter, or homicide not felonious. State facts in



addition to those supposed which may be appropriate to establish the truth of this remark.

Q.—What is the liability of and mode of proceeding against an accessory (1) before, (2) after the fact to the crime of murder?

Q.—What is the form of an indictment for murder? and for manslaughter?

Q.—A subject of the Crown commits murder on a foreigner, out of the Queen's dominions. Is he amenable to our law?

Q.—A. is illegally arrested by a constable, and whilst in custody kills the constable and escapes. Under what circumstances would this homicide amount to manslaughter, and under what circumstances to murder?

### *Nuisance.*

Q.—Exemplify the distinction between a “public” and a “private” nuisance, and state the mode of procedure which may be available in respect of either.

### *Prize Fights.*

Q.—What degree of criminality attaches or may attach to the principals engaged in, and to the spectators present at a prize fight?

### *Shooting.*

Q.—A. feloniously shoots at and wounds B., mistaking him for C. How should the offence committed by A. be charged against them in the indictment? Cite any recent case bearing on this point.

### *Treason.*

Q.—Define the offence of misprision of treason.

Q.—How is the maxim “*voluntas reputatur pro facto*” to be understood in connection with the crime of treason, and the statute of treasons, (25 Edward 3, st. 5, c. 2)?

*Trial in Criminal Law.*

Q.—Under what circumstances will the deposition of a witness duly taken by the committing magistrate be admissible in evidence against the prisoner on his trial at the sessions or assizes.

Q.—Can a jury convict of the “attempt” on an indictment for a felony or misdemeanor?

Q.—State shortly the test for determining whether an indictment may be amended at the trial, and give instances showing the mode of applying such test.

Q.—State exceptions to the maxim that “a man shall not be twice vexed in respect of the same matter.”

Q.—Distinguish between a judicial and an extra-judicial confession. State the principal limitations to the admissibility of the latter in evidence against an accused.

Q.—*Habemus optimum testem confitentem reum.* State fully the reasoning *pro* and *con.* as to the correctness of this saying.

Q.—Explain how the *onus probandi* may be shifted from the one party to the other on the trial of an indictment for libel.

Q.—Under what circumstances may a dying declaration be received in evidence.

Q.—What specific consequences ensue upon a conviction for felony, which do not follow a conviction for misdemeanor?

Q.—Enumerate various offences which, by statute of the present reign, have been taken out of the jurisdiction of Quarter Sessions.

Q.—State shortly the mode of proceeding before a magistrate on a charge of assault.

Q.—In what cases has a justice of the peace discretionary power to admit to bail?

Q.—Enumerate various special pleas which may occur in criminal cases.

10! Q.—Exemplify the maxim that “no man can be a judge in his own cause” by reference to magisterial law.

CONVEYANCING.



## OUTLINE OF CONVEYANCING.

### *Of Modern Tenures.*

On the abolition of military tenures in the reign of Charles II., all tenures were turned into free and common socage, save only tenures in frankalmoign and copyholds.

Tenure in *socage* is a tenure by any free and certain service, and comprises grand and petit serjeanty, burgage, ancient demesne, and gavelkind. *Grand serjeanty* is where a man holds lands of the king by honorary services, to be performed in person, as to carry the king's banner, or his sword at the coronation. The honorary services of grand serjeanty are expressly reserved by the statute abolishing military tenures. *Petit serjeanty* is where a man holds lands of the king to yield to him yearly a bow, a sword, or other thing belonging to war. Tenure in *burgage* is where one holds tenements in an ancient borough of which the king or other person is lord, to pay to him a certain rent. The customs of this tenure are known by the name of Borough English, and one of the most remarkable of them is, that the youngest and not the eldest succeeds to the burgage tenement on the death of his father. Tenure in *ancient demesne* is confined to lands held in socage of those manors that were formerly in the possession of the crown by the services of cultivating the demesnes of such manors, or by a render of provisions. Lands of *gavelkind tenure* (which mostly prevails in Kent) descend to all the sons equally as co-parceners; in default of sons to daughters; and in default of lineal descendants upon collaterals in like

manner. They do not escheat upon conviction or execution for felony; and a minor of the age of 15 years seised in possession may by feoffment alienate absolutely.

Tenure in *copyholds* is derived from tenure in villenage which was when the services were base and uncertain. The tenants hold by copy of court roll or admission as common copyholders *at the will of the lord*, or as free copyholders, or customary freeholders, *according to the custom of the manor*.

Tenure in *frankalmoign* is where a religious corporation holds lands to them and their successors for ever, on condition of performing religious services. By this tenure the parochial clergy hold their lands.

### *The nature of Real Property.*

*Real property* consists of land, and of all rights and profits arising from and annexed to land that are of a *permanent and immoveable* nature, and is usually comprehended under the words lands, tenements, and hereditaments. *Land* means any ground whatever, and includes everything above and below the surface, except gold and silver mines which, by royal prerogative, belong to the crown. *Tenement* is a word of still greater import, signifying anything which may be holden by a tenure. *Hereditament* is the largest and most comprehensive word, including not only lands and tenements, but whatever may be inherited.

Real property is either corporeal or incorporeal. *Corporeal* property consists wholly of substantial and permanent subjects all of which may be comprehended under the general denomination of land. Chattels, such as deer in a park, fishes in a pond, rabbits in a warren, doves in a dove house, charters, court rolls, deeds, and other evidences of the land, together with the chests and boxes in which they are contained, all which are usually annexed to the inheritance and descendible to the heirs, are called *heir looms*.

*Incorporeal property* consists of rights and profits

arising from and annexed to lands, such as advowsons, rents, offices exercisable within certain places, though not annexed to land, and dignities or titles of honor having been originally annexed to land.

### *Quantity of Estates.*

As all lands are considered to be held mediately or immediately from the queen, the interest which the tenant has in land is called an *estate*. The first general division of estates is into such as are *freehold*, or *less than freehold*. An estate of *freehold* is an interest in lands, or other real property held by a free tenure for the life of the tenant or that of some other person, or for a period of *legal indeterminate* duration. An estate for a man's own life is considered greater than an estate for the life of some other person. Estates of freehold are either of *inheritance* or *not of inheritance*. Estates freehold of inheritance are either in *fee simple*, *conditional*, or *base fees*. Estates freehold, *not of inheritance* comprise estates for life, which are either by act of party or by operation of law, such as an estate tail after possibility of issue extinct, and estates by curtesy, in dower, and in jointure. An estate to A. for 99 years, if he so long live, is, however not an estate of freehold, but one less than freehold, as the duration (99 years) is definitively fixed.

Estates *less than freehold* comprise estates for years, from year to year, at will, and on sufferance.

### *Estates in fee simple.*

An estate in *fee simple* or an inheritance absolute, is where one has lands or tenements to hold to him and his heirs for ever. There is no greater estate than an estate in fee simple. The incidents of an estate in fee simple are the power of alienation, either of the whole fee or any smaller interest, its descendible quality to heirs general, its liability to curtesy and dower, and to debts by specialty and simple contract,

as well as to Crown debts. To create an estate in fee simple by *will*, any words showing an intention to pass the whole interest or fee will be sufficient. In a deed however, except in conveyances to corporations, the word *heirs* is in general essential to create an estate in fee simple.

An estate limited to a person and his heirs, with a qualification annexed to it by which it is provided, that it must determine whenever that qualification is at an end, is called a *qualified* or *base* fee. Thus on a grant to A. and his heirs, tenants of the manor of Dale, whenever the heirs of A. cease to be tenants of that manor, the estate determines.

### *Estates Tail.*

A *conditional fee*, at the common law, was a fee limited to some particular heirs of the donee, exclusive of others; as to the heirs of a man's body, thus excluding collaterals. It was called a conditional fee, from the condition by which it was subject, that, if the donee died without such particular heirs, the land should revert to the donor. On the birth of issue the estate became alienable, subject to forfeiture for treason, and could be charged with incumbrances, so as to bind his issue.

This mode of construing conditional fees, completely frustrated the purpose for which these estates were intended, and in order to perpetuate their possession the statute *de Donis Conditionalibus* (13 Edward I. c. 1) was passed. The statute after reciting the right of alienation assumed by the donees of conditional fees, enacts "that the will of the giver according to the form in the deed of gift, manifestly expressed should be observed, so that they to whom a tenement was so given under condition, should not have power to alien the same tenement, whereby it should not remain after the death of the donees, to their issue or to the donor or his heir if issue failed." The construction of this sort of conditional fee was that it



vests an estate of inheritance in the donee, and some particular heirs of his to whom it must descend, notwithstanding any act of the ancestor, and that the estate of the donor is a reversion expectant on the determination of that estate.

An *estate tail* may therefore be described as an inheritance deriving its existence from the statute *de Donis Conditionalibus*, and descendible to some particular heirs only of the person to whom it is granted, and not to his heirs general. Estates tail are either in tail general or in tail special. An estate in *tail general* is one to a man and the heirs of his body. An estate in *tail special* is one to a man and the heirs of his body by a particular wife. Estate tail are also in *tail male*, as to a man and the heirs male of his body, or *tail female* as to a man and the heirs female of his body.

A gift in *frank-marriage* is an absolute mode of creating an estate tail, as where tenements are given by one man to another, together with a wife, who is the daughter or cousin of the donor, to hold in frank-marriage, by which expression the donees shall have the tenements to them and the heirs of their bodies; that is, they are tenants in special tail, and restrained from alienation by the statute *De Donis Conditionalibus*.

"Tenements" is the only word used in the statute; but this word includes not only all corporeal hereditaments, but also incorporeal hereditaments which relate to or arise out of land as commons, rents, and annuities, if charged on land. Offices relating to land, an equity of redemption, money to be laid out in land and dignities, may be also entailed; but estates *pur autre vie*, and chattels real and personal are not entailable within the statute. Estates *pur autre vie* may, however, be devised and limited in strict settlement, by way of remainder, like estates of inheritance so as to answer the purposes of an entail; and terms for years and personal chattels may also be settled for a like purpose by executory devise, or by deed of trust,

provided the limitations do not transgress the law of perpetuity.

An annuity to a man and the heirs of his body, unless charged on land, is a conditional fee at common law as before the statute; and the grantee after the birth of issue may bar the heir or reversioner.

The inconveniences which resulted from the institution of estates tail became so numerous that at length, in the reign of Edward the Fourth, a method was discovered for barring these estates by an actual but collusive action called a recovery, in which the transfer of the property was effected. "The tenant in tail, on the collusive action being brought, was allowed to bring into court some third person, presumed to have been the original grantor of the estate tail. The tenant then alleged that this third person had *warranted* the title; and accordingly begged that he might defend the title which he had so warranted. This third person was accordingly called on; who, in fact, had had nothing to do with the matter; but being a party in the scheme, he admitted the alleged warranty, and then allowed judgment to go against him by default. Whereupon judgment was given for the demandant or plaintiff, to recover the lands from the tenant in tail; and the tenant in tail had judgment empowering him to recover a recompence in lands of *equal value* from the defaulter, who had thus cruelly failed in defending his title. But as the defaulter had no lands to give, the judgment of the court was in favour of the issue against the wrong party; and the estate tail was therefore barred, and with it the remainders and reversions." Estates tail were also formerly barred by fine. A *fine* was an amicable composition and agreement of an actual but collusive suit, whereby the estate in question was acknowledged to be the right of one of the parties. A fine, however, only barred the estates tail. In lieu of fines and recoveries a deed to bar the entail has been substituted.

The principal incidents of estates tail are: 1. Waste. 2. Dower. 3. Curtesy. 4. Bar.

*Estates for Life.*

Estates for *life* are either by the act of parties or the operation of law. Of the former kind are estates for one's own life, or for the life of another, and called an estate *pur autre vie*. Incident to all estates for life are *estovers* and *emblements*. Estovers consist of an allowance of wood from the land for fuel, and the repair of the house, the plough, and the fences. Emblements are crops growing on the land to which executors of tenants for life are entitled. Estates for life created by *operation of law* are: 1. Tenancy in tail after possibility of issue extinct. 2. Tenancy by curtesy of England. 3. Tenancy in dower.

A tenancy *in tail after possibility of issue extinct* arises where lands are given to a man and his wife in special tail, and either of them dies without issue, the survivor is tenant in tail, after possibility of issue extinct, because there is now no possibility of any issue inheritable to such estate tail. In several respects, this estate partakes of the nature of an estate for life, but the tenant is dispunishable for waste.

An estate *by the curtesy of England* is an estate for life, given by law to a husband on the death of his wife, seised of an estate of inheritance; and to which any issue born alive during the marriage, might by possibility inherit.

Aliens and persons attainted appear to be the only persons incapable of being tenants by the curtesy.

The requisites for an estate by curtesy are, 1. Marriage. 2. Seisin in fact as to corporeal hereditaments, or as to incorporeal hereditaments a seisin in law. 3. Birth during the life-time of the wife of issue, alive capable of inheriting the estate. 4. Death of the wife. In gavelkind lands the husband is only entitled to one half the lands, and while a widower; but the birth of issue is not requisite for his title.

An estate *in dower* is an estate for life, given by law to the widow in the *third* part of such lands and tenements, as were her husband's in fee simple or fee

tail at any time during the marriage, and to which the issue (if any) of the marriage might by possibility inherit. The seisin of the husband must be either in fact or in law, as regards all women married before 2nd January, 1834; but as to women married on or since that date, his seisin is not necessary to entitle his widow to dower, and she also is entitled to dower whether the estate of inheritance is legal, equitable, or partly legal and partly equitable. Under the old law there was, and is no dower of a trust. A limitation to a trustee *to uses to bar dower*, is as to women married before the date just mentioned, the usual way of barring dower where a conveyance of lands is made to the husband in fee simple, and is so framed as to give the purchaser all the powers and advantages of a person seised in fee simple. As regards women married since that date the right to dower is liable to be defeated by any whole or partial alienation or charge either by will or deed of the husband, by any declaration of his intention by deed or will that his widow shall not have dower, or by a devise of any lands out of which she is dowable. The widows of traitors are not entitled to dower, which is also forfeited by adultery, attainder, divorce before the death of the husband, or detention of the title deeds from the heir. A *jointure* owes its origin to a clause in the Statute of Uses enacting that no woman who had a jointure would be allowed to claim dower; and is, according to Lord Coke, "a competent livelihood of freehold for the wife of lands or tenements to take effect presently in possession or profit after the decease of her husband for the life of the wife at least, if she herself be not the cause of its determination or forfeiture." The requisites of a jointure are: 1. It must be made before marriage, unless after the death of the husband the widow elects to take a jointure made *after* marriage. 2. It must be made to the woman herself, and not to anyone in trust for her. 3. It must be for the life of the wife. 4. It must be in lieu of her whole dower,

and be so expressed. 5. It must take effect immediately upon the decease of the husband.

There are also equitable jointures, as a trust estate, a covenant to settle lands, or to pay an annuity as jointure, but the widow has a right of election whether she will accept it or not.

### *Estates less than Freehold.*

*Estates for years* are created by a grant of lands for a certain number of years, and were originally introduced for the purposes of cultivation, in consideration of a return of corn, hay, or other portion of the crops. An estate for years is frequently called a term. Another name for an estate for years is a *chattel real*. Of whatever length an estate for years may be, it is considered less than a freehold estate, and a term for a small number of years, or even for a year, or half a year, is in contemplation of law as large an estate as one for many years. The tenant of an estate for years is entitled to estovers, unless restrained by special agreement, but is not entitled to emblements unless the determination of the estate is uncertain.

An estate *from year to year* arises either by the agreement of landlord or tenant, or takes place when an estate at will exists, and rent is paid half yearly or yearly. This estate is determined by six months' notice to quit, so as to terminate with the time in each year when the tenant entered.

An estate *at will* arises where lands and tenements are let by one man to another, to have and to hold to him at the will of the lessor, or may arise from implication. The estate is determinable at the will of either party. Neither party however, can determine the estate at a time which would be prejudicial to the other. The estate is determinable by any act of ownership inconsistent with the nature of the estate, as by entering on land and cutting down trees, or a lease for years, to commence immediately, or by any

act of desertion, or which is inconsistent with this estate, such as an assignment, or the commission of waste.

An estate *at sufferance* arises where a person continues in possession after a particular estate is ended.

### *Customary Estates.*

Customary estates, which are usually called *copyholds* may be described to be a parcel of the demesnes of a manor held at the will of the lord according to the custom of the manor, by a grant from the lord, and an admittance of the tenant entered on the rolls of the Manor Court. Copyholds, as already mentioned, are divided into common copyholds, and free copyholds or customary freeholds. Copyholds are regarded as inferior in point of interest to estates for years of socage tenure. The circumstances necessary for the existence of copyholds are, 1. A manor. 2. A court baron or a freeholders' court, and a customary court. 3. The lands granted must have been parcel of the manors, and demised, and demisable by copy of court roll from time immemorial. By general custom copyholds may be leased for a year, and for years by licensee of the lord. The lord of the manor is generally entitled to the timber, but he cannot cut it without permission of the copyholder.

The estates which may be held in copyholds are usually for lives, although estates in fee, and estates in tail (if warranted by custom) are not unfrequent. A copyholder is entitled to estovers. He cannot without a custom dig for mines, nor, without the licence of the lord, dig in new mines.

The usual incidents of copyholds are: 1. Fealty. 2. Suit of Court. 3. Escheat. 4. Fines on admittance. 5. Fealty.

Copyholds are conveyed by surrender and admittance.

Copyholds are destroyed by 1. Extinguishment. 2. Forfeiture. 3. Enfranchisement.

*Equitable Estates.*

This term is applied to such estates as are usually regulated by the rules of equity. Of this nature are *Trusts*, to which *Uses* previously to the 27 Hen. 8, c. 10, (The Statute of *Uses*) were nearly synonymous. Before that statute a *use* was a right in equity to the profits of land, the legal seisin of which was in another, and arose when the owner of real estate conveyed it by feoffment to some friend with a secret agreement that the feoffee should be seised of the lands to the use of the feoffor, or of a third person. Thus the legal seisin was in one person, and the use or right to the rents or profits was in another. *Uses* became general in the reign of Edward the Third, to avoid the statutes against mortmain. These uses were taken under the protection of the Court of Chancery in order to compel the person seised to perform the trust. Not being objects of tenure uses were not liable to relief, wardships, or marriages, and mainly to preserve these profitable incidents of feudal tenure the Statute of *Uses* was passed by Henry the Eighth, enacting that whenever a person should stand seised to the use of another, that the latter, or *cestui que use*, should be deemed the legal owner. The effect of this statute was to transfer the actual seisin and possession in fact without livery of seisin, entry, or attornment. And the possession thus transferred was not a mere seisin or possession in law, but an actual seisin and possession in fact; not a mere title to enter on the land, but an actual estate.

The circumstances necessary to the operation of the Statute of *Uses* are: 1. A person seised to the use of some other person. 2. A *cestui que use* in being (*in esse*). 3. A use in *esse* in possession, remainder, or reversion. In the limitation of uses a fee may be limited upon a fee, a fee may be limited to commence at a future period, and an estate may be made to cease by a matter *ex post facto*.

The object and the intention of the Statute of *Uses*

were to destroy that double property in land which had been introduced into the English law by the invention of uses. If, therefore, the intention of the legislature had been carried into effect, no use could ever have existed for more than an instant, for the moment a use was created the statute would have transferred the legal seisin and possession to such a use. But the strict construction which the judges put on that statute defeated in a great measure its effect, as they determined that there were some uses to which the statute did not transfer the possession, so that uses were not entirely abolished, but still continued separate and distinct from the legal estate, and were taken notice of, and supported by the Court of Chancery under the name of "trusts." A *trust estate* may be described to be a right in equity to *take the rents and profits* of lands, the legal estate of which is vested in some other person; to compel the person thus seised of the legal estate, who is called the trustee to *execute* such conveyances of the land as the person entitled to the profits, who is called the *cestui que trust* shall direct, and to defend the title to the land.

Trusts are created in three direct modes; 1st, where a use is limited upon a use; 2nd, on a limitation to trustees to pay over the rents and profits to a third person; and 3rd, on a limitation of a term of years in trust. Trust terms for years are either in gross, or attendant on the inheritance. Terms *in gross* are those which are separated from the inheritance, and vested in trustees for the use of *particular persons not entitled to the freehold*, or for *particular purposes*. Terms in gross are in general governed by the same rules as legal ones. *Terms attendant on the inheritance*, are terms whose purposes have been satisfied, but kept on foot to protect real property, and partly to keep it in the right channel, and are distinguished from terms in gross, from being held in trust for the owner of the inheritance. Terms are attendant on the inheritance either by an express declaration of trust, or by con-



struction of law. Previously to the 8 and 9 Vic., c. 112, the assignment of attendant terms was the usual practice on the purchase of estates in fee simple, but that act has extinguished the terms themselves, and so rendered their assignment impossible.

### *Estates on Condition.*

An *estate on condition* is one to which a qualification or restriction is annexed, whereby it is provided that in case a particular event does or does not happen, an estate shall commence, be enlarged, or defeated. Conditions are either precedent or subsequent. Where a condition must be performed before an estate can commence it is called a *condition precedent*, but where the effect of a condition is either to enlarge or defeat an estate already created, it is called a *condition subsequent*. Conditions are construed precedent, or subsequent according to the intention of the parties. The distinction between a condition precedent, and a condition subsequent is that where performance is impossible, illegal, or repugnant to the nature of the estate and the condition is *precedent*, no estate will vest until the condition be performed, but where it is *subsequent* the estate will become absolute, and the condition is void.

Among estates on condition we may also include mortgages, estates by statute merchant, statute staple, and elegit.

A mortgage is a pledge of land as a security for the repayment of money. Mortgages are of two kinds, viz: the Welsh, or *vivum vadium*, or common kind *vadium mortuum*. A *Welsh mortgage* is where a man borrows a sum of another, and grants him an estate to hold till the rents and profits shall repay the sum borrowed. The *common* kind of *mortgage* is where a man borrows of another a specific sum, and grants him an estate for the whole, or for part of his interest, as in fee or for a term of years, on *condition* that if the

mortgagee shall repay the mortgage money on a certain day mentioned in the mortgage deed, that then the mortgagee may re-enter on the estate so granted in pledge, or as is now the usual way, that the mortgagee shall re-convey the estate to the mortgagor.

The estate becomes vested in the mortgagee absolutely *at law* if the money is not paid by or on the day mentioned, and the mortgagor is out of possession. In all mortgages there is a covenant from the mortgagor, his heirs, executors, and administrators, to repay the debt and interest, which creates a *personal covenant* between the mortgagor and mortgagee for the payment of the money. A mortgagor can redeem the estate within twenty years from the last acknowledgement of the relation of debtor and creditor subsisting between them by the mortgagee or so long as that relation appears to subsist between them, unless upon the application of the mortgagee the right to redeem be previously *foreclosed* by a decree of the court. This power to redeem is called the mortgagor's *equity of redemption*. A mortgagor is allowed to redeem on payment of principal, interest, and expenses. A mortgagee may compel a mortgagor to redeem or he may foreclose. By foreclosure a mortgagor loses his equity of redemption. Mortgages are almost entirely subject to the control of the courts of equity.

Estates may also be held by a creditor as a security for the repayment of money by a legal and compulsory process, which may be either by statute merchant, statute staple, or *elegit*. A statute merchant, and a recognizance in the nature of a statute staple are now obsolete, and the only process of compulsory security now used is the writ of *elegit*. By it a creditor is put in possession by the sheriff of the whole of the lands of the debtor, and whether the estates are legal or equitable, until the money due on the judgment on which the writ issued is paid. The judgment binds all estates legal and equitable, and is an actual charge, but purchasers without notice are protected in equity.

*Of the time of enjoyment of Estates.*

Estates in regard to the *time of enjoyment* are either in possession, reversion, or remainder.

An estate *in possession* is one to which there is a right of present enjoyment.

An estate *in reversion* is what remains in the grantor upon the creation of a less estate than his own. Thus where a lease is made by one seised in fee simple, his estate is a reversion, and will become an estate in possession on the expiration of the lease.

An estate *in remainder* is one to take effect on the expiration of a preceding less estate, and originally created together with it. Remainders are either vested or contingent. A *vested* remainder is one limited to a person *capable of receiving the possession should the preceding less estate happen to terminate*, as to A. for life, remainder to B. in fee. A remainder is *contingent* when the particular estate may happen to end before the person to whom the remainder is limited can take the possession, or is limited to a person, or a class of persons, not ascertainable at the time of the limitation. A limitation to A. for life, and after the death of B. remainder to C. in fee., furnishes an illustration of a contingent remainder of the former kind, while a limitation to A. and B. for life with remainder to the survivor in fee, is an example of the latter kind of contingent remainder.

In the creation of remainders the following rules must be observed:—"First, there must be a present or particular estate created, which if the remainder be a *vested* one must be at least for years; or, if the remainder be *contingent* must be an estate of freehold; as an estate of freehold cannot commence at a future time by the common law. Secondly, the particular estate and the remainders must be created by the *same deed*. Thirdly, the remainder must vest in the grantee during the particular estate, or at the very instant it determines. Fourthly, and if the remainder be contingent it must be limited to some one that may by

common possibility be in existence (*esse*) at or before the determination of the particular estate. The contingency must not be illegal, remote, or repugnant."—Watkin's Conveyancing, 8th edition, by Merrifield. A contingent remainder must not be confounded with a *conditional limitation*. The former is regarded as a continuance of the prior estate, but a conditional limitation defeats a prior estate, and is regarded as a different estate. A contingent remainder must also be distinguished from an *executory devise*. The former requires a particular estate to support it, but the latter does not. By an executory devise a fee may be limited after a fee; a fee may be limited to commence at a future time, and previously to the 8 and 9 Vic. c. 106, there was also another distinction that contingent remainders could, and executory devises could not, be destroyed by the act of the person taking the preceding estate.

*Cross remainders* arise out of a tenancy to two or more persons in common, for life, or in tail. They may be created in deeds by express words, but in wills they may be implied. Cross remainders are where the share of each tenant in common accrues to the surviving tenants equally in common instead of devolving on the reversioner or remainder-man until the failure of all the tenants in common or their issue.

### *Of the Number and Connexion of the Tenants.*

Estates in regard to the tenants are either in 1. Severalty. 2. Joint Tenancy. 3. Coparcenary. 4. Tenancy in Common.

An estate *in severalty* is where a person holds lands in his own right only *without* having any other joined or connected with him. An estate *in joint tenancy* is where lands or tenements are granted to two or more persons to hold in fee simple, fee tail, for life, or for years.

The requisites to this estate are 1. Unity of interest. 2. Unity of Title. 3. Unity of Time. 4. Unity of

Possession. The survivor will take the whole estate. Unity of time is not always one of the requisites of this estate, as where the estate is limited to trustees to uses, the parties will take as the uses arise, and be considered as being in under the conveyance to the trustees. Joint tenants are said to be seised *per my et per tout* by the *half* or *moiety* and by *all*, that they and each of them have the entire possession as well of every parcel as of the whole, or each has an undivided moiety of the whole, and not the whole of an undivided moiety. A release is the proper mode of transferring a *freehold* interest, held in joint tenancy from one joint tenant to another. A joint tenancy may be destroyed by a voluntary, or compulsory partition, or by grant to a stranger. A joint tenancy is not however destroyed by a devise.

An estate *in coparcenary* arises where a person seised in lands in fee simple or fee tail dies, and leaves more than one female heir as daughters, sisters, aunts, or other females on whom by the law of descents the estate descends jointly. This estate may also arise by *custom*, as where the male children take by gavelkind and other customary descents, where the estate descends in equal moieties. Like in a joint tenancy there is a unity of interest, title and possession in estate in coparcenary, but they differ in being by *descent* and not by *purchase*. Coparceners have in judgment of law distinct freeholds.

A *tenancy in common* is where *two or more hold lands* or tenements in fee simple or tail, for life or years by *several titles*, and occupy the same in common. This estate if in fee simple, is created by a conveyance of lands to two, to have and to hold the one moiety to the one and his heirs, and the other moiety to the other and his heirs. The only unity required between tenants in common is that of unity of possession. A tenancy in common may be created by the destruction of a joint tenancy as well as of an estate in coparcenary.

*Incorporeal Hereditaments.*

*Incorporeal hereditaments* comprise Advowsons, Tithes, Commons, Ways, Offices, Dignities, Franchises, and Rents.

An *advowson* is a right of presentation to a church or ecclesiastical edifice. Presentation is the offering of a clerk to the bishop, while nomination is the offering of a clerk to the patron. Thus a mortgagor has a right to nominate, but a mortgagee to present. Advowsons are either appendant, or in gross. An advowson *appendant* is one annexed to the manor in which the church was first created. An advowson *in gross* is one which is separated from the manor to which it was appendant, by any legal conveyance.

*Tithes* may be described to be a right to the tenth part of the produce of lands, and the personal industry of the occupiers. Tithes are praedial, personal, or mixed. Praedial tithes consisting of the immediate produce of the land are due of common right, it being a principle of the common law that all lands ought to pay tithes. *Mixed and personal* tithes are due only by custom, therefore unless they have been usually paid they are not demandable. Tithes are also divided into great and small tithes. The tithes of corn, hay, and wood are great tithes. Mixed and personal tithes together with tithes of hops, potatoes, madder, and wood are small tithes.

Tithes have been mostly commuted under the Tithe Commutation Acts for a rent charge, payable half yearly, and calculated according to the averages of the prices of grain published in the London Gazette. Tenants paying the rent charge may deduct the amount from the rent. Powers of distress are also granted by the Act for the recovery of the rent charge.

*Common* is a right or privilege which one or more persons have to take or use a part or portion of the lands, waters, woods, or produce of the lands of another. This privilege is divided into common *of pasture*, common *appendant*, common *appurtenant*, common

because of *vicinage*, common *in gross*, *stinted common*, common of *estovers*, common of *turbary*, common of *piscary*. A right of common may be extinguished by release, unity of possession, or under the Enclosure Acts.

*Ways*, or rights of way, entitle individuals or a particular description of individuals to pass over the grounds of another. Ways are either a footway, a footway and highway, or a footway, horseway and cartway. The last is either the queen's highway or a private road. A right of way can only be used according to the grant, or the occasion from which it arises.

An *office* is a right to exercise a public or private employment, and to take the fees and emoluments belonging to it; and all offices relating to land or exerciseable within a particular district or relating to land, are deemed incorporeal hereditaments, and classed under the head of *real property*. Offices are either judicial, or ministerial. *Judicial* offices relate to the administration of justice, and must be exercised by persons of sufficient skill and experience in the duties of such offices. *Ministerial* offices are those where little more than attention and fidelity are required to the due discharge of them.

*Dignities* are personal honours originally connected with land, and are considered incorporeal hereditaments. Dignities are either, 1. By writ. 2. By letters patent. 3. Marriage. 4. Descent.

*Rents* are defined by Lord Chief B. Gilbert to be "an annual return made by the tenant, either in labour, money, or provisions, in retribution of the land that passes." There are three kinds of rents: rent service, rent charge, and rent seek. *Rent service* is where a tenant holds his land by fealty and certain rent. This rent was originally called rent service, because it was given as a compensation for the services to which the land was originally liable. A right of distress is inseparably incident to rent service. A *rent charge* is so called because in the grant of rent out of lands by deed a power of distress is inserted in the grant, and

thus the lands are charged with a distress for the recovery of the rent. A rent charge may be created either by grant or by means of the Statute of Uses, when a right of entry is usually given. A *rent seck*, or bare rent, is nothing more than a rent for the recovery of which no power of distress is given either by common law or agreement of the parties; but by the statute 4, Geo. II., c. 28, s. 5, a power of distress is made incident to such rents. Rents of *assize* are rents of freeholders, and copyholders to the lord of a manor. The rents of freeholders are frequently called *chief rents*. Both sorts are indifferently called *quit rents*.

*Franchises* are royal privileges or branches of the king's prerogative subsisting by a grant from the crown. Franchises are of various kinds, as a *forest*, a *chase*, a *park*, a *free warren*, a *manor*, a *court leet*, *estrays*, *wreck*, *treasure trove*, *royal fish*, a *free fishery*, a *hundred* or *wapentake*, a *fair*, or *market*.

### *Of Title in general.*

Title is the manner in which estates may be acquired or lost. The acquisition of an estate in land is commonly said to be either by *descent* or *purchase*, but more accurately speaking, it is either by act of law, or act of the party, which is technically called purchase. Title by *act of law* expresses all those modes of acquisition whereby the law itself casts the right to the estate upon the acquirer independently of any act or interference of his own. Of these the principal mode is title by descent, but the term will also include title by *escheat*, and also that of tenant *by the curtesy*, and of *tenant in dower*.

Purchase, on the other hand, though in its vulgar and confined acceptation, it is applied only to such acquisitions of land as are obtained by way of bargain and sale for money, or some other valuable consideration, yet properly includes every lawful mode of coming to an estate by *the act of a party* as opposed to



the act of law, and consisting of title by *forfeitures, occupancy, alienation, or conveyance*.

A complete title consists of possession, or an acknowledgement of title from the party in possession, the right of possession, and the right of property.

*Remitter* is the doctrine of law which adjudges a man to hold by the elder title when he possesses two titles to land: one a more ancient, and another a later title.

### *Of Title by Descent.*

*Descent*, or hereditary succession, is where a person on the death of his ancestor intestate acquires his estate as his heir-at-law. An heir, therefore, is he upon whom the law casts the estate immediately on the death of the ancestor; and an estate so descended on the heir, is in law, called the inheritance.

An heir must be *legitimate*, and a natural born subject, or the child of a natural born subject, or the grandchild of a British subject on the father's side. A person naturalized is also capable of inheriting lands.

The rules, or canons, of descent are: 1. Descent is always to be traced from the purchaser, that is, from the person who has acquired the land in some other way than by descent, and the last owner shall be considered to be the purchaser unless it can be proved that he inherited the same, in which case the descent must be traced till we arrive at a person as to whom it cannot be proved that he inherited. With regard, however, to descents which have occurred on deaths before the 1st of January, 1834, the old law is still in operation, and by it descent was traced from the person last *actually seised*.

2. The male issue is admitted before the female.

3. Of several males all being in equal degree, the eldest inherits, but the females all together.

4. That the lineal descendants *in infinitum* of any person deceased shall represent their ancestor; that is,

shall stand in the same place as the person himself would have done had he been living. The three preceding rules also prevailed in the old law of descents.

5. That on failure of lineal descendants or issue of the purchaser, the inheritance shall descend to his nearest legal ancestor, in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor; so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue other than a nearer lineal ancestor or his issue. By the old law on failure of lineal descendants or issue of the person last seised, the inheritance descended to his collateral relations being of the blood of the first purchaser subject to the three preceding rules.

6. None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and also that no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed, and that no female maternal ancestors of such person, nor any of his descendants shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed. This rule is somewhat analogous to that in collateral descents under the old law directing that kindred derived from the blood of the male ancestors, however remote, shall be admitted before those from the blood of the female, however near; unless where the lands have in effect descended from a female.

7. Any person related to the person from whom the descent is to be traced by the half-blood shall be capable of being his heir; and his place in the order of inheritance is declared to be next after any relation

of the same degree of the whole blood and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female; so that the brother of the half-blood on the part of the father shall inherit next after the sister of the whole blood on the part of the father and their issue, and the brother of the half-blood on the part of the mother, shall inherit next after the mother. Under the old law the collateral heir of the person last seised must have been of the whole blood, and a relative of the half-blood was incapable of being his heir.

8. In the admission of female paternal ancestors, the mother of the more remote male paternal ancestors and her heirs shall be preferred to the mother of a less remote male paternal ancestor and her heirs; and in the admission of female maternal ancestors, the mother of the more remote male maternal ancestor and her heirs shall be preferred to the mother of a less remote male maternal ancestor and her heirs.

9. Where there shall be a total failure of heirs of the purchaser, or any land shall be descendible, as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the land shall descend, and the descent shall thenceforth be traced from the person last entitled to the land, as if he had been the purchaser thereof.

### *Of other Titles by Law.*

*Escheat* is where lands revert to the lord of the fee on the death of a tenant without heirs, or on his attainder for treason, or murder. In cases of treason the Crown is entitled to the land by escheat. By 3 and 4 W. IV., c. 106, s. 10, when the person from whom the descent of any land is to be traced shall have had any relation, who having been attainted shall have died before such descent shall have taken place, then such attainder shall not prevent any person from

inheriting such land, who would have been capable of inheriting the same by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated in consequence before 1st January, 1834. Lands vested in any person upon any trust or by way of mortgage, are exempt from escheat. In cases of attainder for other felonies than murder, the lands are only forfeited for the life of the offender.

*Prescription* is where a man can show no other title than that of long usage, and is applicable to incorporeal hereditaments only. The distinction between a prescription and a custom is, that the latter is a *local* usage, and not annexed to any person. Previously to the 2 and 3 W. IV., c. 7, the prescription must have gone back or rather raised a presumption that it was in existence at the time of legal memory (1 Ric. I., July, 1189), but since that act the enjoyment for 30 and 60 years of rights of common, for 20 and 40 years of rights of way or other easements, and for 20 years of light is sufficient, unless such rights, easements, or light have been enjoyed by consent.

*The Statutes of Limitation* also confer a title and operate as an extinguishment of a remedy by action without giving the estate to the other; and are therefore properly called a *negative* prescription. Thus the rights of the crown are barred after the lapse of 60 years. No person can bring an action for the recovery of lands but within 20 years next after the time at which the right to bring such action shall have first accrued to him or to some person through whom he claims; and as to estates in reversion or remainder, or other future estates, the right shall be deemed to have first accrued at the time at which any such estate became an estate in possession. But a written acknowledgement of the title of the person entitled, given to him or his agent, signed by the person in possession, will extend the time of claim to 20 years from such acknowledgment. If, however, when the right to bring an action first accrues, the person

entitled should be under disability to sue by reason of infancy, coverture (if a woman), idiocy, lunacy, unsoundness of mind, or absence beyond seas 10 years are allowed from the time when the person entitled shall have ceased to be under disability, or shall have died, notwithstanding the period of 20 years above-mentioned may have expired, yet so that the whole period do not, including the time of disability, exceed 40 years; and no further time is allowed on account of the disability of any other person than the one to whom the right of action first accrues.

The time for bringing an action or suit to enforce the right of presentation to a benefice is limited to three successive incumbencies, all adverse to the right of presentation claimed, or to the period of 60 years if the three incumbencies do not together amount to that time: but whatever the length of the incumbencies, no such action or suit can be brought after the expiration of 100 years from the time at which adverse possession of the benefice shall have been obtained. Money secured by mortgage, or judgment, or otherwise charged upon land, and also legacies are to be deemed satisfied at the end of 20 years if no interest should be paid, or written acknowledgement given in the meantime. The right to rents, whether rents service or rents charge, and also the right of tithes when in the hands of laymen is subject to the same period of limitation as the right to land. And in every case where the period limited by the act is determined, the right of the person who might have brought any action or suit for the recovery of the land, rent, or advowson in question within the period is extinguished.

*Title by Occupancy* (though now abolished) was where a man was tenant *pur autre vie*, or had an estate granted to himself only without mentioning his heirs' for the life of another man, and died without alienation during the life of *cestui que vie* or him by whose life it was holden, in which case he who could first enter on the land might lawfully retain the possession so long

as *cestui que vie* lived by right of occupaney. But if the estate *pur autre vie* had been granted to a man and *his heirs* during the life of the *cestui que vie*, and the grantee died without alienation, and while the life for which he held continued there could not be a title by common occupaney, but the heir would succeed, and was called a *special* occupant.

*The Title by common occupaney* in an estate *pur autre vie* has been in effect annihilated by the successive provisions of the legislature. For by the statute of frauds, 29 Car. II., c. 3, s. 121, 14 Geo. II., c. 20, and 7 W. IV., and 1 Vic., c. 26, such an estate is rendered devisable by will, and when no disposition has been made by the deceased owner, and there is no special occupant, it is placed, on the death of the owner, on the same footing with his personal estate. This subject is at present regulated by the statute last mentioned, which, after repealing the former enactments (except as to the estates *pur autre vie* of persons dying before 1st January, 1838), provides in terms somewhat more extensive than the prior statutes, that an estate *pur autre vie*, of whatever tenure, and whether it be a corporeal or incorporeal hereditament, may in all cases be devised by last will and testament; and (s. 6) that if no disposition by will be made of an estate *pur autre vie* of a freehold nature, it shall be chargeable in the hands of the heir, if it comes to him by reason of special occupaney as assets by descent (as in the case of freehold land in fee simple); and in case there shall be no special occupant of any estate *pur autre vie* it shall go to the executor or administrator of the party that had the estate by virtue of the grant; and in every case where it comes to the hands of such personal representatives shall be assets in his hand to be applied and distributed in the same manner as personal estate.

Title by *forfeiture* is a punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they go to the party injured as a

recompence for the wrong which either he alone, or the public, together with himself, hath sustained. The two kinds of forfeiture are—1st, Forfeiture by alienation as in mortmain; 2nd, Forfeiture by wrongful disclaimer. Title may also be lost by *merger*, which is the annihilation by act of law of a less estate in a greater when the two estates are united in the same person in the same right. The requisites to produce merger are:—1. The estates must meet in the same person without any intervening estate; 2. They must be estates not rights; 3. They must be estates in the same part of the land; 4. The estate in remainder or reversion must be greater in quantity; 5. The estates must unite in the same person in the same right, or if in different rights they must meet by act of party and not by mere act of law, and an absolute power of alienation must be incident to both estates when in different rights; 6. Both estates must be legal or equitable. From the operation of the statute *de Donis Conditionalibus* an estate tail will not merge in a reversion in fee. The doctrine of merger has also been materially qualified by the 3 and 4 W. IV., c. 74, s. 39, and the 8 and 9 Vic., c. 106, s. s. 8 and 9.

### *Of Title by Alienation.*

The most usual and universal method of acquiring a title to real estates is that of alienation or conveyance, in which term is included every mode of acquisition of property, by the act of the party.

### *Of the Parties to an Alienation.*

*Corporations*, religious or others may purchase lands, yet, unless they have a licence to hold in mortmain, they cannot retain such purchase, but it shall be forfeited to the lord of the fee. Corporations sole and aggregate are subject to certain restrictions in the alienation of estates.

*Lunatics or Idiots* are disabled from entering into

contracts. The committees of idiots and lunatics are however, enabled to deal with their estates. Acts done during lucid intervals are also valid.

An *Infant* is disabled from entering into contracts, either as vendor or purchaser, but if he contracts to buy an estate, and pays a deposit it cannot *in the absence of fraud* be recovered back. A contract may be confirmed by an infant after he attains his majority, and which if once done cannot afterwards be avoided by him; for all such acts and deeds of an infant as are merely voidable may be ratified by him when he comes of age. A feoffment made under a custom by an infant is however valid.

A *married woman* is disabled from contracting during coverture, regarding her real estate. By 3 and 4 W. IV., c. 27, every married woman, not being tenant in tail, is enabled by deed to dispose or release any estate in her lands, which she alone or she and her husband in her right may have therein. But to render such an assurance valid, it is necessary not only that both husband and wife should concur therein, but also that she should be examined separate and apart from her husband before a judge, or by the commissioners appointed under the Act, as to her freedom and consent, (s. s. 77, 79) in addition to which the deed must be duly acknowledged according to the terms prescribed by the Act.

A *Tenant in Tail* under the Fines and Recoveries Substitution Act, (3 and 4 W. 4, c. 74) where there is a protector of the settlement, can bar the remainders expectant upon the determination of his estate with the concurrence or consent of such protector, but a tenant in tail may by assurance under that statute bar his own estate in the lands, and thus create a base fee; producing, in fact, the same effect that a fine with proclamations would have done under the old system.

In general, the protector is the owner of the preceding estate to the estate tail, although the settlor entailing lands is empowered by the settlement to appoint any number of persons not exceeding three,



and not being aliens to be protectors; and he is also empowered by a power of appointment in the settlement to perpetuate the protectorship to any persons not exceeding 3, not being aliens, whom he may think proper (s. 32) but the same section also provides that every deed appointing a protector under a power in a settlement, and every deed by which a protector shall relinquish his office, shall be void, unless enrolled in Chancery within 6 months after the execution thereof. The protector has the absolute power of giving or withholding his consent. The entail must be barred by a deed, and a contract, though under seal, will be insufficient for the purpose. Every assurance by a tenant in tail (except a lease not exceeding 21 years at rack rent, or not less than 3-5ths of a rack rent) will be inoperative unless enrolled in Chancery within six calendar months after the execution, but when so enrolled it will take effect from the time it was executed (s. 41). Provision is also made in the Act for cases of disability of the protector.

Tenants in tail where the reversion is in the Crown, and tenants in tail after possibility of issue extinct, are prohibited from disposing of their estates. Where estates are purchased by the nation as a reward for public services, the tenants in tail are usually prohibited from disposing of their estates. Women tenants in tail *ex provisione viri* under the statute 11 Henry VII., c. 20, of estates created before the Fines and Recoveries Substitution Act are under a similar restriction, but such estates tail cannot be created since the Fines and Recoveries Substitution Act.

### *Of Deeds.*

A *deed* is a writing on parchment or paper, sealed and delivered to prove and testify the agreement of the parties whose deed it is to the things therein contained. Deeds are either deeds poll or indentures. A *deed poll* has its edge even, and is made by one person only. An *indenture* is a mutual agreement

between two or more persons, whereof each party has usually a part, the first skin of parchment on which it is written, being cut in an undulating line. Formerly where a deed was described as an indenture, but was not indented, it did not take effect as such, but it will now by 8 and 9 Vic., c. 106. s. 5.

The requisites for a deed are—1. Sufficient parties and a proper subject-matter; 2. A good and sufficient consideration to render the deed good in equity; 3. Writing, or printing, or both, on paper duly stamped; 4. Words sufficient to specify the agreement, and bind the parties legally and orderly set forth; 5. Reading, if desired; 6. Sealing and signing; 7. Delivery; 8. Attestation by witnesses, where required by law.

All deeds by which lands may be conveyed or charged derive their effect either from the common law or the Statute of Uses. Deeds which derive their effect from the *Common Law* are—1. Feoffments; 2. Gifts; 3. Grants; 4. Leases; 5. Exchanges; 6. Partitions; 7. Releases; 8. Confirmations; 9. Surrenders; 10. Assignments; 11. Defeasances.

In ancient times a *feoffment* was the only mode of conveyance, and was a gift of the inheritance, accompanied with a formal delivery of possession by the feoffor to the feoffee. This formal delivery of possession was called livery of seisin, and was of two kinds, livery in deed and livery in law. *Livery in deed* is the actual delivery of the possession where the feoffor comes himself upon the land, and taking the ring of the door of the principal mansion delivers the same to the feoffee in the name of seisin; or it may be by words only without the delivery of anything. *Livery in law*, or within view, was where the feoffor was not actually on the land or in the house; but being within sight of it says to the feoffee “I give to you and your heirs yonder house and land; go and enter into the same and take possession of it accordingly.” Until the enactment of the Statute of Frauds no writing was necessary for a feoffment, and by the late act (8 and 9 Vic., c. 106) a feoffment must be by deed, if other

than a feoffment made under a custom by an infant. The most remarkable effect of a feoffment was its tortious operation, whereby a freehold was transferred without regard to the feoffor's quantity of estate; but this incident was abolished by the 8 and 9 Vic., c. 106. A feoffment was in ancient times the regular mode of conveying corporeal hereditaments, which were from this circumstance said to "lie in livery."

A *grant* was the proper mode of conveying *incorporeal hereditaments*; hence the expression that advowsons, rents, and other incorporeal hereditaments "lie in grant." A grant in general could not be made without deed, and will pass no more than what by law the grantor is enabled to convey. By the 8 and 9 Vic., c. 106, *corporeal* hereditaments are made to lie in grant.

The term *gift* was properly applied to the creation of an estate tail, as a feoffment was to that of an estate in fee simple. It differed in nothing from a feoffment, but in the nature of the estate that passed by it, and livery of seisin must have been given to the donee to render it effectual.

A *lease* is a conveyance of lands and tenements to a person for life, years, or at will, in consideration of a rent or other recompence. A lease for years must be perfected by entry. In a lease the word "demise" is generally used, and implies a covenant for quiet enjoyment, unless when qualified by an express covenant.

The usual parts of a lease are: 1. Parties. 2. Demise. 3. Parcels. 4. Habendum. 5. Reddendum. Covenants by the lessee to pay the rent and taxes, to keep the premises insured and in repair, and to yield up at the end of the term, and to enable the landlord to enter and inspect. There are also usually a proviso for re-entry, and a covenant by the lessor for quiet enjoyment. A lease for a period exceeding three years must be by deed.

An *exchange* is a mutual grant of equal interests, the one in consideration of the other. The requisites for

an exchange are equality in quantity of estates, and that the word "exchange" be used. Previously to the 8 and 9 Vic. c. 106, the word "exchange" implied a right of re-entry on the eviction of either of the parties from the lands exchanged. The inconvenience was obviated in modern practice by means of mutual conveyances. An exchange of any tenements or hereditaments (not being copyhold) made after the 1st day of October, 1845, is void at law, unless made by deed.

A *partition* is an agreement by which two or more joint tenants, coparceners, or tenants in common divide the lands so held among them in severalty, each taking a distinct part. Since the 8 and 9 Vic., c. 106, all partitions of hereditaments (not being copyhold) shall be void at law unless made by deed. Previously to this act a partition between coparceners implied a condition, by virtue of which, if either was lawfully evicted she might enter in the other allotments, and thus annulling the partition, be restored to her old undivided share in the remaining tenements. This difficulty was however obviated by mutual conveyances.

A *release* is a conveyance of a right to a person in possession of the land in which the right exists. The most usual operation of a release is by way of *enlargement of estate*, as where he who has the reversion and inheritance releases all his right and interest in the lands to the person who has the particular estate. A release may also enure by way of *passing an estate* (mitter l'estate), by way of *passing a right* (mitter le droit)' by way of *extinguishment*, and by way of *entry and feoffment*. Except, however, in a release to enlarge an estate, the fee may be conveyed without the use of words of inheritance.

A *confirmation* is a conveyance whereby a voidable estate is ratified and made unavoidable, or where a particular estate is increased. In the latter respect the operation of a confirmation is precisely similar to that of a release by way of *enlargement* of estate. On

neither of these conveyances is livery of seisin requisite.

A *surrender* is the falling or yielding up of a less estate as for life or years into the greater estate in a reversion or remainder. By the Statute of Frauds a surrender was required to be by deed or note in writing, signed by the surrenderor or his agent. By 8 and 9 Vic., c. 106, s. 3, a surrender in writing of any interest in any hereditament, not being a copyhold interest, and not being an interest which by law might have been created without writing, made after 1st October, 1845, shall be void at law unless made by deed.

An *assignment* is properly a transfer of a person's whole interest, whatever that interest may be, although the term is usually applied to the transfer of a term for years. By the 8 and 9 Vic., c. 106, an assignment of a chattel interest, not being copyhold in any tenements or hereditaments, shall be void at law unless made by deed, while, on the other hand by sec. 2, an assignment even of a lease for life may be effected by deed of *grant* without livery of seisin.

A *defeasance* is a collateral deed made at the same time as a feoffment or grant, containing certain conditions upon the performance of which the estate then created, may be defeated or wholly undone. This was the mode in which mortgages in former times were usually made, the mortgagor enfeoffing the mortgagee, and he at the same time executing a deed of defeasance whereby the feoffment was rendered void on repayment of a certain day of the money borrowed. Things merely *executory*, as rents or conditions, might always be avoided by a defeasance made *after* the time of their creation. Defeasances in this country are now of rare occurrence.

Deeds which derive their effect from the *Statute of Uses* are of two kinds. First, where the deed only transfers the use which is said to operate *without transmutation of possession*, because the alteration of the legal seisin and possession is effected by the mere

operation of the statute; secondly, where the legal estate is transferred by a common law assurance, and a use is declared on such assurance. This is said to operate *by transmutation of possession*, because the legal seisin is first transferred by a common law assurance.

A *bargain and sale* operates without transmutation of possession, and is a contract by which a person conveys his lands for a pecuniary consideration, in consequence of which a use arises to the bargainee, and the Statute of Uses immediately transfers the legal estate and possession to the bargainee. Bargains and sales of estates of inheritance or freehold must be made by deed indented, and enrolled within six lunar months from the date in one of the courts at Westminster, or before the clerk of the peace, and a justice of the peace for the county in which the lands are situate.

A *covenant to stand seised* is the second kind of deed deriving its effect from the Statute of Uses, and operates without transmutation of possession, for it only transfers the use. No species of property can be transferred by a covenant to stand seised, which cannot be conveyed to a use, and the covenantor must be seised in possession or entitled in remainder, or reversion at the time of the execution of the deed, because the use must arise out of the seisin or right, which the covenantor has at the time. The consideration for this conveyance must be natural love for a wife or legitimate child, or for a near relation by blood, and cannot be money.

A *Lease and Release* is the third kind of conveyance usually classed under those deriving their effect from the Statute of Uses, but of which only one part is derived from that statute, and the other from the principles of the common law. It is in fact, a bargain and sale for a year, and a common law release operating by enlargement of estate. Bargains and sales of estates of inheritance, or of freehold must, as we have seen, be enrolled, but the statute makes no provision for the enrolment of bargains and sales of estates less than freehold. Advantage was taken of this omission in

the statute, and a bargain and sale for a year was made by the vendor to the person to whom the lands were to be conveyed; by this a use was raised in the bargainee without any enrolment, to which the statute transferred the possession. Thus the bargainee became immediately capable of accepting a release of the freehold and reversion; and accordingly a release was made to him, dated the day next after the day of the date of the bargain and sale. In this manner the purchaser became seised of an estate in fee simple, and as a lease and release operates by transmutation of possession, no actual entry was necessary. Until lately a lease and release was the most common assurance for the transfer of freehold estates, but has now in a great measure been superseded by grants to uses. By the 4 and 5 Vic., c. 21, a release, if expressed to be made in pursuance of that statute, was made as effectual as a lease and release by the same parties.

A *feoffment to uses* was the ordinary conveyance of the common law, of which the nature has been already explained, but with a limitation to uses superadded. This method involving as it does, the necessity of making livery of seisin, is however rarely employed.

A *grant to uses* has nearly superseded the four preceding conveyances. In its ancient and proper application a grant was confined to the transfer of incorporeal hereditaments, but since the 8 and 9 Vic., c. 106, s. 2, has also been applicable to that of corporeal hereditaments, from the provision of the statute declaring that "corporeal hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as livery."

Limitations and modifications of estates by virtue of *powers* are also derived from the Statute of Uses. There are also common law powers, as a power of attorney, and all powers relating to personal estates. Powers under the Statute of Uses derive their effect from that statute and operate contrary to the rules of the common law, as in powers of revocation and new appointment, with limitations of uses in the meantime

and until and in default of appointment. Lands may also be conveyed by, 1. Private act of parliament. 2. The King's grant; and 3. A will or devise. The objects of a *private act of parliament* are various, but in regard to our subject are usually to supply in a deed an omission which is absolutely necessary to carry it into execution, and to rectify a palpable mistake.

As it is a rule of the common law that the king can only give by matter of record, therefore *the King's grants* are contained in charters, or letters patent under the great seal, which are usually addressed to all the king's subjects. There have been no grants of parks, warrens, or free chase for the last two centuries.

### *Of Wills.*

The last mode of conveying real property is by *devise*, or disposition contained in a person's last will, to take place at the death of the devisor. It is generally agreed that the power of devising lands existed in the time of the Saxons, but upon the establishment of the Normans it was taken away as inconsistent with the principles of the feudal law, and although many of the restraints on alienation by deed were removed before Glanville wrote, yet the power of devising lands was not allowed for a long time after. The power of devising continued, however, as to socage lands situated in cities and boroughs, and also as to all lands in Kent, held by the custom of gavelkind; and as the ancient Saxon laws are supposed to have remained unaltered in Kent, this is an additional proof that lands were generally devisable in the time of the Saxons.

The practice of devising the use of lands carried the power of disposing of real property much further than was consistent with the nature of tenures. It tended to deprive the lords of their wardships, profits of marriage, and reliefs; and the king of his primer seisin, livery, and fines for alienation, which constituted a considerable part of the ancient revenue of the



crown. This together with many other inconveniences that flowed from the doctrine of uses was removed by the Statute of Uses, which uniting the legal seisin of the land to the use, effectually took away the power of devising.

The inconveniences which attended this restraint on the disposition of lands by devise induced the legislature in a few years after to pass the 32 Hen. 8, c. 1, by which every proprietor of land was empowered by writing to devise the whole if held in socage, and two thirds, if held by knight service of the king or other person. This act was explained and amended by 34 and 35 Hen. 8, c. 5. Under the authority of these statutes no more than two thirds of land held by knight service could be devised, but in consequence of the abolition of military tenures, and the conversion of knight service and all the other old modes of holding lands into common socage, the operation of these statutes was extended to all freehold estates in fee simple. The statutes of wills being in the affirmative were held not to take away the custom of devising; and formerly it was of importance in many cases to resort to the custom of devising as being most beneficial to the devisee. But now the two powers are by the statute 7 W. 4, and 1 Vic., c. 26, assimilated and made commensurate. Wills made before the 1st January, 1838, are however not affected by that statute, but are regulated by the prior law on the subject, unless re-executed, re-published, or revived, since the new law came into operation. A will to be valid under the prior law was required to be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express directions, and to be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else it was utterly void and of none effect. For a will of personalty, however, no writing was in general requisite until the 1 Vic., c. 26, although almost invariably employed. No particular form is requisite for a will, but to be valid,

under the new law, it must be in writing and signed at the foot or end thereof by the testator or some other person in his presence, and by his direction; and such signature shall be made or acknowledged by the testator in the presence of *two* or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator. The words "signature at the foot or end of a will" have been explained by the Wills Act Amendment Act, 1852. Soldiers in actual military service, or seamen on a voyage, may make verbal wills in the presence of one witness.

Previously to the 1 Vic., c. 26, a person under 21 could make a will of personalty, by custom devise copyholds, and if a father, could also devise the guardianship of his children. Since that Act a person to be capable of making a will must be 21 years of age. He must also be of sound mind, capable of comprehension, and under no undue influence. A married woman can only make a will of lands in execution of a power expressly conferred on her for that purpose. Of chattels real and personal she may make a will with the assent of her husband, or independently of her husband where property has been settled to her separate use, or an express power to make a will has been conferred upon her. Where a husband has been banished for life, or she holds property as an executrix or administratrix, a married woman is also empowered to make a will. A lunatic during a lucid interval may make a will. A alien friend (that is, a subject of a country with which we are at *peace*) may make a will of personalty, and of whatever interest he may legally hold in land.

Any natural person, who is not a witness or the wife or husband of a witness to a will, may take a devise or legacy under a will. In general corporations unless they have a licence to hold lands in mortmain cannot be devisees. For charitable purposes, no estate or interest of any kind in land, or money or personal estate to be laid out in land can be given by will. By

several Acts of parliament however, various corporations and charitable institutions have been empowered to take land by will, or money secured on land. An alien would appear to be capable of taking by devise only the interest he may legally hold in land. Any words sufficient to denote the persons meant by the testator, and to distinguish them from all others will be a good description of the devisees.

Since the 1 Vic., c. 26, a person may by will dispose of all real and personal estate, which he shall be entitled to, either at law or in equity, at the time of his death, and which if not so devised, bequeathed or disposed of, would devolve upon the heir-at-law or customary heir of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator. Rights of entry, mere possibilities without an interest, and some customary estates could not under the former law be devised. All real and personal estate to which a testator may become entitled subsequently to the execution of a will, and belonging to him at the time of his death will also pass unless expressly excluded. Before the late Act the law was different as to real estate.

A will may be revoked in four ways: 1. By another will, or by a document executed and attested as a will, containing a clause expressly and explicitly revoking the former will. 2. By a subsequent will or codicil containing dispositions inconsistent with those in the former will. 3. By the destruction before the death of the testator, of the first will with the intention on the part of the testator thereby to revoke it. 4. A will is also revoked by marriage, except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of appointment, pass to the heir, personal representative, or next of kin of the appointor.

Obliterations and alterations where the words remain legible, and cancellation by drawing lines across the whole or any part of the will are of no effect unless properly executed and attested.

Devises and bequests contained in wills are liable to failure from the death of the devisee or legatee before the testator. This is called the doctrine of lapse. It applies equally to devises of real estate, and to bequests of personalty. Since the 1 Vic., c. 26, however, devises of estates in tail shall not lapse, but where the devisee in tail dies during the life-time of the testator leaving issue, the devise shall take effect as if he had died immediately after the testator, unless a contrary intention appear by the will (s. 32). Gifts to children or other issue who shall die before the testator, having issue living at the testator's death, are not to lapse, but if no contrary intention appear by the will, are to take effect as if the persons had died immediately after the testator. In other cases lapse may be prevented by directing the property to go over to another on the death of the first devisee before the testator. A limitation to the heirs, executors, *and* administrators of the devisee will not prevent a lapse, but the result will be otherwise if the words are *or* his heirs, executors, or administrators.

In the construction of wills the general rule is that the intention must be effectuated. For this purpose words are rejected or supplied. Thus the word "or" is construed and, and "and" or. Where there is a *latent* ambiguity in a will it may be explained. In the description of the things given no technical words are necessary, but the words should denote with sufficient certainty what is meant to be given. A devise without words of limitation was formerly held to create only an estate for life, but since the 1 Vic., c. 26, where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will. Another important rule of construction is that with regard to the words *dying without issue* in an executory devise (as where an estate in fee simple is devised to A. and

upon his dying without issue then to B.). Before the late act these words were interpreted to import an indefinite failure of issue unless restrained by the context to the death of the person; but section 29 enacts that in any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue shall be construed to mean a want or failure of issue in the lifetime or at the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise. Provided that this act shall not extend to cases where such words as aforesaid import if no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

## BOOKS OF REFERENCE ON CONVEYANCING.

## Amos and Ferard on Fixtures.

Blackstone's Commentaries. Vol. II.

Coke upon Littleton. Butler's notes.

Cruise's Digest. Title XVI., "Remainders."

### Dart's Vendors and Purchasers.

### Fisher on Mortgages.

## Gale on Easements.

Hargreave on the Thelluson Act.

Hayes on the Common Law, Uses and Trusts.

+ ——— on Conveyancing.

Hayes and Jarman's Concise Forms of Wills. The notes to the last edition.

Jarman on Wills.

Lord St. Leonards' Essay on the Real Property Statutes.

Lewin on Trusts.

## Lewis on Perpetuities.

Prideaux on Judgments.

Sanders on Uses, by Sanders and Warner.

## Shelford's Law of Copyholds.

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Mortmain.

— Real Property Statutes.

\*Smith's Leading Cases. The last edition.

4 ——— (Josiah William) Real and Personal Property.

\*The Statutes, 22 and 23 Vic., c. 35; 23 and 24 Vic., c. 38; 23 and 24 Vic., c. 145. (Hunter or Langley's Edition of those Acts.)

\*The Statute of Limitations, 3 and 4 W. IV., c. 27.

\* Stephen's Commentaries. Vol. I. 4th edition.

Sugden on Powers.

— Vendors and Purchasers.

### ✧ Tudor's Leading Cases in Conveyancing.

## White and Tudor's Leading Cases in Equity.

Williams, Joshua, on the Law of Personal Property.

Real Property.

✠ The Wills' Act, 1 Vic., c. 26; 15 and 16 Vic., c. 24; 24 and 25 Vic., c. c. 114, 121, as to Domicil, and as to the Wills of Personalty, made by British subjects.

## QUESTIONS ON CONVEYANCING.

### *Tenures.*

Q.—Explain the doctrine of tenure, and show concisely how that doctrine has affected estates in land, 1. In regard to enjoyment; 2. In regard to the modification of ownership; 3. In regard to the forms of conveyance.

Q.—Describe the tenure of estates in gavelkind, borough English, and ancient demesne.

Q.—What was the object of the statute *Quia Emptores*?

### *The kinds of Property.*

Q.—Classify the principal kinds of property under the two heads of “real” and “personal” estate.

Q.—A testator devises a house and estate to A. for life, and after his decease to his first and other sons in tail male with remainder over; he also directs that the pictures in the house shall go with it as heir-looms. The eldest son of A. dies an infant, and without issue. The second son also dies an infant, but leaving an only son. A. then dies leaving a third son, and the grandson him surviving. Who is entitled to the pictures?

### *Quantity of Estates.*

Q.—Is there any difference in the quantity of the following estates?—a lease to A. for 99 years; a lease to A. for 99 years if B. should so long live; a lease to A. for three lives; a lease to A. for 99 years if he should so long live.

Q.—What are corporeal and incorporeal hereditaments respectively? Give examples of each kind.

*Estates in Fee Simple.*

Q.—How many kinds of estate in fee-simple are there? How do they differ as to quality? and what effect had the Statute de Donis on their quantity?

Q.—A. seised in fee dies intestate and indebted. Mention the various kinds of debts to which the descended estate is liable; the order in which they will be paid, and the extent of the heir's liability?

Q.—Give a definition and point out the difference between an estate of freehold and of an estate in fee-simple. Must an owner of a fee-simple necessarily hold the whole of the soil? Give examples in illustration of your answer. Which is the greater estate?

Q.—Devise by will (since 1838) of fee-simple land to A.; grant by deed of fee-simple land to A. What estate does A. take in each of those cases. Give the reasons for your answer.

Q.—Grant or devise to A., B. and C. and their heirs; to A., B. and C. and the survivors, and survivor of them and his heirs; to A., B. and C. equally, and their respective heirs. What estates are taken under the above limitations?

Q.—Are there any; and, if any, what instruments operating *inter vivos*, by which at law or in equity an estate in fee-simple may be acquired without the use of the word "heirs?"

Q.—Explain the origin and growth of the tenure of an estate in fee-simple; and in so doing trace the steps by which the tenant ultimately obtained absolute power of alienation over the fee against the lord.

*Estates Tail.*

Q.—What is an estate tail?

Q.—To what extent has the power of alienation by tenants in tail been enlarged by the 3 and 4 Wm. IV., c. 74?

Q.—Define the office of "Protector to a settlement." What effect would the giving or withholding his con-



sent have upon the estate acquired by a tenant in tail under a disentailing deed ?

Q.—In a disentailing assurance under the new law, what important point is to be regarded in the wording of the operative part ? To what extent can a tenant in tail in possession bind his issue and the remainder men by contract ?

Q.—Give the different kinds of estates tail, and the words necessary to create by deed such estates tail.

Q.—A fee-simple estate is granted by deed to A. and his heirs male ; a similar estate is devised by will to B. and his heirs male. What estates do A. and B. respectively take ? Give the reasons for your answer.

Q.—To what statute do estates tail owe their origin ? What are the only kinds of property which may strictly be subjects of entails, and why and on what grounds was the restricted construction of the statute adopted ? What is the result of an attempt to entail property not coming within the provisions of the same statute ?

Q.—A. is tenant for life with remainder to B. in tail. Explain the mode of conveyance, in use at the present day, for vesting in a purchaser from A. and B. an estate in fee-simple in possession.

Q.—An estate is devised to A. for life, remainder to the first or other sons of A. who shall be living at A.'s death, and the heirs of the body of such first or other son, remainder to B. in fee. A. has two sons both of age, and joins with the elder in executing a disentailing assurance, and in conveying the estate to a purchaser in fee. Does the purchaser take a fee-simple absolute or any less estate ?

Q.—Explain the nature of a fine and a recovery ; illustrate your answer by describing the effect of each on an estate tail, and the remainder expectant thereon.

Q.—How were entails barred before 1834, and how are they now barred ? Suppose A. had been tenant in tail in possession, with remainder to himself in fee, could he (before 1834) have barred this estate in more ways than one ; and if he could, give your reasons for preferring one of those plans.

Q.—A., tenant for life of fee simple estates with power of leasing and other powers, and B., tenant in tail in remainder, wishes to bar the entail, and limit the estates in such a manner that A. may still have a life estate, and also retain the powers referred to, and that B. may have the remainder in fee. Give shortly the scheme of such a disentailing deed.

Q.—Fee simple lands are by a settlement dated before the year 1834, conveyed to a grantee and his heirs to the use of Mary, a married woman, for her life for her separate use, remainder to her first and other sons successively in tail. Who would be the proper parties to a disentailing deed to be executed in the present year of the estate tail created by the above settlement? In other words, do Mary and her husband, or does Mary alone, or her husband alone, fill the office of protector of the settlement?

Q.—A. tenant for life, remainder to B. for life, remainder to C. in tail male; who are the necessary parties to a disentailing deed? And after the execution by those parties, what further ceremony is necessary to the perfecting of the assurance, and within what time must that ceremony be performed?

Q.—Can a tenant in tail in possession make a good equitable mortgage which would bar the issue in tail of the entailed lands by a mere deposit of the title deeds with or without a deposit in writing? Or is any, and if any, what kind of assurance necessary?

Q.—Freeholds and copyholds are assured unto and to the use of X. and his heirs in trust for A. for life, with remainder upon trust for B. and the heirs of his body. Who are the proper parties to a bar of the entail so created, and what ceremony is requisite in addition to the execution of the disentailing deed? As to the copyholds, can the interested parties adopt more courses than one?

Q.—An annuity (*not* charged on land) is given to A. and his heirs; another similar annuity is given to B. and the heirs of his body. What is the nature of the interest of A. and B. respectively in these annuities,?

What powers of alienation have A. and B. respectively over the annuities, and in the case of the death of A. intestate, and of B. without issue, who would become entitled to the several annuities?

Q.—Has a tenant in tail, after possibility of issue extinct, any—and if any, what—powers and privileges over his estate which are not possessed by a tenant for life?

Q.—Lands are limited to A. and B. (two sisters) and the heirs of their bodies. What estate do A. and B. respectively take under that limitation?

Q.—Is an estate tail of a tenant in tail who dies without barring the entail subject to any, and, if any, what debts of the tenant in tail?

### *Estates for Life.*

Q.—Point out the difference between an estate for life by operation of law, and by act of party?

Q.—What acts may tenants for life impeachable, and not impeachable for waste, do or permit in respect of the dealing with or management of the settled estate?

Q.—Of what quality is an estate *pur autre vie* in land? Under what circumstances is the holder of an estate *pur autre vie* called the general occupant, and the special occupant respectively?

Q.—State the several modes by which *quasi* tenants in tail *pur autre vie* in possession and in remainder may bar their *quasi* estates tail.

Q.—How does an “estate tail after possibility of issue extinct” arise? What are the respective rights and privileges of a tenant for life, with or without impeachment of waste, and of a tenant in tail after possibility of issue extinct, with respect to the cutting of timber and other acts of waste?

Q.—A tenant in fee grants a lease “to A. for life,” and a tenant in tail grants “a lease to B. for life,” for whose lives do these lessees respectively hold? Give the reasons for your answer.

Q.—What acts or omissions constitute “voluntary waste,” “permissive waste,” and “equitable waste” respectively? Who are the parties entitled to relief in cases of waste, and how is such relief obtained?

Q.—A tenant for life and a tenant in tail respectively pay off charges on their settled estates. What, in the absence of evidence of intention, is the presumption of law with respect to the merger or continued existence of those charges respectively?

*Dower.*

Q.—Distinguish between Dower and Jointure. To what extent has the widow’s right to dower been invaded by recent enactment?

Q.—What are the six legal requisites to the bar of a woman’s dower by jointure?

Q.—How may the dower of a woman married before the 1st January, 1834, and the dower of a woman married since 1st January, 1834, be respectively barred?

Q.—On what day did the new Dower Act come into operation? To what event does that day refer?

Q.—What is the effect of a late decision as to the common dower uses in a conveyance made before the day on which the Dower Act came into operation on the dower of a woman married to the purchaser after that day?

Q.—Give a definition of dower applicable to the state of the law before the passing of the Dower Act of 1833.

Q.—Give the outline of a common conveyance of a fee simple estate, from A. and B., his wife entitled to dower, to C., a purchaser to dower uses,—giving also the heads of the covenants for title. What superadded ceremony is necessary to the completion of the deed?

56 Q.—An estate is conveyed to such uses as A. shall appoint, and in default of appointment to A. for life, remainder to the right heirs of A. A.’s marriage takes place previous to 1834; is A.’s wife entitled to

her dower? If so, can A. nevertheless make a good title to a purchaser free from dower?

*Estate by the Curtesy.*

Q.—Define tenancy by the curtesy. A married woman seised of an estate in tail-male dies leaving a daughter. Is the husband tenant by the curtesy?

*Estates for years.*

Q.—Define a lease, an under-lease, and an *interesse termini*. An assignment of a term of years is made to A., to the use of B., does the Statute of Uses apply?

Q.—Give the heads of the usual covenants contained in an assignment of leaseholds for years from a vendor to a purchaser.

Q.—Leaseholds for years are, generally, classed under the head of personal estate; are such leaseholds, under any, and (if any) what circumstances, considered or dealt with otherwise than as personalty?

*Estates from year to year.*

Q.—A. becomes quarterly tenant to B., the tenancy commencing on the 25th of March. When must A. or B. give notice to the other to determine the tenancy?

Q.—During what time must a tenant remove fixtures which by law are removeable as between him and his landlord, and what exceptions are there to the general rule on this point?

Q.—What is the general rule of law with respect to annexations made by a tenant to the property of the landlord? Give some of the most important instances in which, in modern times, relaxations have been made in this rule.

*Estates on Condition.*

Q.—Explain the operation of a mortgage deed at law; and describe accurately the several rights and

remedies of a mortgagor and mortgagee at law, and in equity.

Q.—What is meant by a judgment debt? What is its effect under the statute of 1 and 2 Vic., c. 100, upon the landed property of the judgment debtor? Through what period ought an intended purchaser to extend his search for judgments against the vendor?

Q.—At what time does the statutory period of limitation begin to run as between mortgagor and mortgagee; (1) where the mortgagor is in possession; (2) where the mortgagee is in possession.

Q.—The 42nd section of the 3 and 4 W. IV., c. 27, enacts that “no arrears of interest with respect to any sum of money payable out of any land shall be recovered but within six years from the time the same shall have become due,” and the 3rd section of 3 and 4 W. IV., c. 42, enacts that “all actions of covenant upon any specialty shall be sued within 20 years after the causes of such actions shall have accrued.” How do you reconcile these two sections in the case of a mortgage deed containing the usual covenant for payment of principal and interest, when more than 20 years’ arrears of interest have accrued due?

Q.—Draw up a scheme of a mortgage in fee with the usual power of sale; and explain the advantages resulting from the insertion of such a power.

Q.—Distinguish between conditions precedent and subsequent; and illustrate the effect of the non-performance of either kind of condition upon the estate to which it is annexed.

Q.—State and explain the difference in the law as it affects real and personal estates respectively with regard to restraints on marriage. Give the reasons of your answer.

Q.—Explain the term “equity of redemption,” and show how it may be lost with reference to the provisions of the 3 and 4 W. 4, c. 27.

Q.—Where should a judgment be registered? And as to one place of registration, what must be done, and how often, to keep the judgment subsisting?

Q.—A mortgagee in fee has a power of sale prior in creation, to the date of judgments against the mortgagor; can the mortgagee make a good title against the judgment creditors, and what are the rights of those creditors in the supposed case?

Q.—State shortly the principal enactments of the new statute 18 and 19 Vic., c. 15, upon judgments, and show what are the most important changes wrought by that statute.

Q.—In drawing a mortgage to trustees who are advancing their trust money, notice of what fact should be omitted from the mortgage, and what declaration should be inserted? Give the reasons for your answer.

Q.—What is the difference between the common covenants for title in a conveyance and in a mortgage of an estate in fee simple.

Q.—A lessee whose lease contains a reservation of a large ground rent and onerous covenants, borrows money on mortgage. What form of mortgage would be most advantageous to the mortgagee, and for what reasons?

Q.—A tenant for life in possession of estate A., and a tenant in tail in possession of estate B., both die after having respectively paid off mortgages existing on their respective estates before the dates of the settlements respectively. The mortgages are simply transferred to the tenant for life, and tenant in tail respectively in the ordinary form. What is the presumption of law as to the merger or continued existence of each of the above mortgages?

Q.—State the rule of equity with respect to the marshalling of securities as between the mortgagees and incumbrancers of the same mortgagor.

Q.—Give instances in which the person entitled to the first charge upon an estate has lost the benefit of that charge by the effect of merger.

Q.—Under what circumstances will a power of sale authorize a mortgage? What was decided by *Stronghill v. Anstey* upon this point?

Q.—What are the reasons given for the doctrine laid

down in *Whitworth v. Gaugain* with reference to the priority of an equitable mortgage over a subsequent judgment creditor, who has sued out an *elegit* without notice of the mortgage.

Q.—A. mortgages a trust estate or an equity of redemption in fee simple hereditaments and a policy of assurance to B. Is notice to the holder of the legal fee, or the first mortgagee, or the assurance office, absolutely necessary; and, if necessary, for what reason in each case?

Q.—What debts may be tacked by a first mortgagee having the legal estate, and for what persons?

Q.—What is the effect of a late statute as to the liability to pay mortgages on devised or descended property?

Q.—A., the owner of a fee simple estate mortgages it in fee to B., with power of sale to secure £1000. A., subsequently mortgages the same estate to C. for £900, and afterwards to D. for £800. D. gives notice of his security, but C. gives no such notice. The estate is then sold by B. under his power of sale for £2100. Will the notice of B. be productive of any benefit to him, and what will be the shares of C. and D. respectively in the £1000, the balance, after paying off the first mortgage?

Q.—Suppose an advance to be made on a second mortgage to an owner of land who has previously executed a mortgage of the same land, to secure a sum already due and further advances. Can the first mortgagee, after notice of the second mortgage, and to the prejudice of the second mortgagee, make further advances? If such advances are made, in what manner would they be charged upon land?

Q.—What, until recently, was the effect of a licence by a lessor to a breach of condition by his lessee? What is the effect of the statute 22 and 23 Vic. c. 35, in this respect?

Q.—Give the form of a memorandum by way of equitable mortgage which usually accompanies a deposit of title deeds on the loan of money, A. being the lender, and B. the borrower.



*Estates in Joint Tenancy, Coparcenary, and Tenancy in Common.*

Q.—An estate is conveyed to A., B. and C. as joint tenants in fee. A. conveys all his estate and interest to B.: what is the quality of B.'s and C.'s estate respectively?

Q.—A. and B. are joint tenants in fee. A. devises all his real estate and dies before B.: is the jointure severed?

Q.—Limit an estate to A. and B., (1) as joint tenants in tail; (2) as joint tenants in fee; and (3) as tenants in common in fee. A. and B. are joint tenants in fee; by what process can they be seised of their respective shares in severalty?

Q.—An estate is conveyed to A. and B. and their heirs. A. conveys all his interest to C. in fee: what is the quality of C.'s estate?

Q.—A., seised in fee, dies intestate, leaving two daughters, B. and C. B. conveys all her estate in the lands to D. in fee. What is the quality of B.'s estate before and after the conveyance?

Q.—Explain the difference between an estate in coparcenary, an estate in joint tenancy, and an estate held in common.

Q.—What is the effect upon the joint tenancy of the marriage of a woman entitled as one of several joint tenants to:—1. Freehold estates; 2. Personal estate in possession; 3. Personal estate in reversion?

Q.—A. and B. buy a fee simple estate and pay the purchase money in equal shares: the conveyance is taken to A. and B. as joint-tenants in fee: A. dies intestate and without having severed the joint tenancy. In whom are the legal and beneficial ownership of the estate vested? Answer the same question with the variation—that the purchase-money was paid in unequal shares.

*Uses.*

Q.—Define a springing use, a shifting use, and an executory devise, giving examples.

Q.—I. Bargain and sale to A. and his heirs to the use of B. and his heirs.

II. Covenant to stand seised for the benefit of A. and his heirs to the use of B. and his heirs.

III. Appointment (under a power) to A. and his heirs, to the use of B. and his heirs.

IV. Grant, release, or feoffment to A. and his heirs to the use of B. and his heirs.

Where is the legal estate in each of the above four cases? Give the reasons for your answers.

Q.—What was the probable design of the Statute of Uses? State some of the most important changes in the forms of assurance effected by that statute.

Q.—Explain the nature of a bargain and sale before and after the Statute of Uses.

Q.—Show in what way springing and shifting uses do not conform to the common law.

Q.—What is the effect of a limitation in which the estate of the *cestui que use* is greater than that of the grantee to uses? For example, if land be conveyed to A. for life, to the use of B. for life, in tail, or in fee, what estate does B. take?

Q.—After the passing of the Statute of Uses, by what means did the Court of Chancery regain a large portion of the equitable jurisdiction of which that statute was intended to deprive it.

Q.—What are the four requisites for the due creation of a use; and what words are sufficient to raise a use?

Q.—Devise by will of fee simple lands to A. and his heirs, in trust for B. and his heirs; where is the legal estate in each of those examples? Does the learning of uses apply to devises by will?

Q.—To answer what purposes were uses originally invented? What were the principal acts relating to uses prior to the act 27 Hen. 8, c. 10? State shortly the objects of those acts, including that of 27 Hen. 8, c. 10.

Q.—What considerations were requisite to raise a use or trust before the Statute of Uses?

Q.—What conveyances do, and what do not operate by transmutation of possession? An estate in fee simple is conveyed to A., to the use of B., in trust for C., what estates do A., B., and C. respectively take when the conveyance is made? (1) by lease and release; (2) by bargain and sale enrolled.

Q.—In whom is the legal and equitable estate vested in the following examples: Demise by one seised in fee to A., to the use of B.; an assignment of a term of years to A., to the use of B.

Q.—What, in the opinion of Mr. Hayes, was the design of the Statute of Uses; and what according to the same learned author, were some of the most important and prominent actual results of that statute?

Q.—A limitation of the legal fee in land to the use of A. for life, with remainder to the use of the first son of B., a bachelor. Suppose at A.'s death B. still continues a bachelor, what is the effect of the above limitation? Would the result be the same if the subject-matter were an equitable interest or a copyhold estate in land? Give the reasons for your answer.

Q.—A., seised in fee, limits the estate to B. for life, remainder to the heirs of his (A.'s) body, remainder to C. in fee: does A. take any estate under this limitation?

Q.—What is a resulting use, and how is the construction that a use is a resulting use rebutted?

Q.—State the circumstances under which the doctrine of *scintilla juris et tituli* came into question. What were the various opinions as to this doctrine? Has any, and, if any, what act, been lately passed affecting the doctrine referred to?

### *Trusts.*

Q.—When did the danger of remoteness in limitations of real and personal estate first arise?

Q.—Explain the doctrine of *cy-pres*, and its connection with the law of perpetuity.

Q.—Within what limits are trusts for accumulation now restricted by law? When was this restriction first imposed?

Q.—Before the legislative interference referred to in the last question, for what period might real and personal estate have been accumulated?

Q.—A., seised in fee of lands subject to dower, aliens to B. in fee, who gets in an old outstanding term. After the passing of the 8 and 9 Vic., c. 112, B. aliens to C. in fee. Does the term act as a protection against the dower of B.'s wife as well as A.'s?

Q.—A man possessed of a sum of stock standing in his own name, and also entitled to a sum of stock standing in the name of trustees, settles both sums on his marriage in the usual manner. Give an accurate analysis of the form of settlement.

Q.—Draw out a complete scheme of an ordinary marriage settlement. The intended husband's fortune consists of a sum of money secured by the demise of freeholds for a term of years; the intended wife's fortune, of a sum of stock standing in her own name, which is to be settled to her separate use.

Q.—Explain the difference between marriage articles and a marriage settlement, and the circumstances under which it would be necessary to resort to the former.

Q.—What is meant by limiting a freehold estate of inheritance in strict settlement? Set out the substance of the limitations in their proper order.

Q.—Is a trust for a charitable purpose liable to be barred by the statute of Limitations (3 and 4 W. IV., c. 27.) Lands were devised to A. in fee, charged with an annuity of £10 for the use of the poor of X. The annuity remains unpaid, and no claim is made on behalf of the charity for 20 years after the testator's death. Is the estate in the hands of A. discharged from the annuity?

Q.—A small fee simple estate is to be included in a marriage settlement for the benefit of the husband, and wife and children of the marriage. What is the best mode of drawing such a settlement? and give reasons for the plan which you advise.

Q.—What is the best form of and the best time for

a disclaimer of an estate or trust? Can a married woman disclaim an estate in land and in what manner? Can a trustee, after accepting the trusts of a settlement, retire from the trusteeship under any, and what circumstances?

Q.—Is it possible to settle upon a male real or personal estate (not his own at the time of the settlement) in such a way that his creditors may have no power over that property? Is there any difference between a trust for a male until he shall become bankrupt and a trust for a male for life with a proviso defeating his life interest on his bankruptcy?

Q.—By a marriage settlement executed prior to the marriage, moneys of the husband and wife respectively are vested in trustees upon trust for the husband and wife successively for life, and after the death of the survivor for the children of the marriage, with a proviso that if the husband becomes bankrupt or insolvent the life-interest of the husband in all the trust property is to cease for the benefit of his wife and children. To what extent is such a settlement valid?

Q.—Is the rule against perpetuities applicable to limitations which take effect by way of remainder in the same manner as to limitations taking effect by way of executory devise or springing and shifting use? State the opinions of the different authorities on this subject, and give the reasons for your adopting any one of those opinions.

Q.—Under what disabilities do trustees, counsel, solicitors, and guardians respectively rest with respect to contracts and dealings with their *cestuis que trustent*, clients, and wards respectively.

Q.—A testator devises real estate to A. (or A. and B.) absolutely, but no trust appears on the face of the will. In fact, the devise is made to A. (or A. and B.) for charitable purposes. What acts of the testator, or of the devisee or devisees are necessary to raise a trust for the charitable purposes intended? And if such a

trust arises, what is the result as to the devised real estate?

Q.—State and illustrate “the rule against perpetuities.”

Q.—What is an attendant term? When is a term said to be attendant by construction of law?

Q.—Under what circumstances may a purchaser even with notice of a prior objection to title obtain a good title, and is there any exception to this rule?

Q.—After A. has executed a voluntary conveyance of fee simple estates in favour of his wife and children, what power or dominion over those estates remains in A.? Can a valuable consideration be supplied by any, and if any, what acts of A., or any other persons, after such execution?

Q.—Explain the nature of the protection afforded prior to 1846, by the assignment of a satisfied term to a trustee upon trust to attend the inheritance.

Q.—Under what circumstances is a purchaser affected by actual or constructive notice?

Q.—Is the enrolment of a document, or the registration of a judgment, a bill of sale, or annuity deed, or of a deed in the Middlesex or Yorkshire registry notice to a purchaser? And is a purchaser who is fixed with notice of the existence of any of the liabilities which are not duly registered bound by all or any, and if any, which of them though unregistered?

Q.—A. devises or conveys two fee simple estates, one of them to B. and his heirs upon trust for C. and the heirs of his body; the other to B. and his heirs upon trust to settle the same upon C. and the heirs of his body, so as to prevent C. from defeating the entail. Under what classes of trusts respectively would you place these two devises or conveyances? and show what would be their effect respectively as to the dominion of C. over the two estates.

Q.—Prior to the passing of the act 22 and 23 Vic., c. 35, under what circumstances could trustees having a power of sale but no express power to give good receipts, give valid discharges for the purchase money,

and what alteration has the lastly named act made in this respect?

Q.—What facts or circumstances will make binding on a debtor, and all persons claiming under him, a deed of conveyance and assignment by the debtor to trustees for the general benefit of creditors, which deed was voluntary in its execution?

Q.—An executory trust is so framed that, if carried literally into effect, it would be void on account of its transgressing the perpetuity line. Would the trust fail altogether, or would it be carried out to any, and if any, what extent, and by what means?

Q.—In a transaction between vendor and purchaser, what is the point of time prior to which a purchaser must be fixed with actual or constructive notice of an incumbrance, so as to render him liable, in case he disregards such notice?

Q.—What is the rule of Courts of Equity with respect to the liability of purchasers from vendors holding a fiduciary position to see to the application of the purchase-money, and has this rule been affected in any, and if any, what way, by a recent act of parliament?

Q.—Under a general charge of debts upon real estate, state what, according to some recent decisions, are the powers of executors to sell such real estate under a will dated before the 22 and 23 Vic., c. 35, came into operation. What alteration has the lastly named act made in this respect?

### *Estates in Remainder and Reversion.*

Q.—Explain the difference between a remainder and a reversion; state the reasons why a vested remainder can, and a contingent remainder cannot, be supported by a chattel interest in land.

Q.—A term of years is assigned to A. for life, remainder to B. absolutely. How should the assignment be framed so as to make the limitation to B. valid?

Q.—What is the nature of the uncertainty which forms the leading distinction between a vested and a contingent remainder?

Q.—Does the rule in *Shelley's case* apply with equal force; (1) where a man by marriage agrees to settle his estate upon himself for life with remainder to the heirs of his body; and (2) where similar limitations are contained in a will?

An estate is limited to A. for life, remainder to the first and other sons of B. in tail, remainder to C. in fee. To whom does the estate go upon the death of A., leaving B. surviving, but unmarried? Give a reason for your answer.

Q.—Enumerate the kinds of contingent remainders, and give examples of each kind.

Q.—Since the passing of the Act 8 and 9 Vic. c. 106, is a contingent remainder liable to failure or destruction by any, and if any, what means? Is it still necessary to adopt any, and if any, what plan, to prevent such failure or destruction?

Q.—Does the heir of a settlor take by purchase or descent under a limitation to A. for life, remainder to the right heirs of the settlor?

Q.—Are there any, and what remainders which a recovery could not, and a deed perfected in the manner required by the statute 3 and 4 W. 4, c. 74, cannot, bar?

Q.—Is a contingent remainder now transferable at law, and under what statute? what was the effect before that statute of a formal transfer of a contingent remainder?

150 Q.—Give the rule in *Shelley's case* as to fee simple estates. Is there any analogous rule with respect to personal estate?

Q.—What is the principle of Merger? Give a reason for the co-existence in the same person of "an estate tail," and the immediate reversion in fee."

Q.—An estate is limited to A. for life, remainder to B.'s sons in tail, remainder to C. in fee. In how many ways could A. and C. under the old law have dealt



with their respective estates, so as to destroy the contingent remainder to B.'s sons.

Q.—What is the effect of the 8 and 9 Vic., c. 106, s. 9, as to the merger or surrender of reversions expectant on leases?

Q.—To what extent has the power of alienating contingent and executory interests by deed or will been enlarged by recent legislation? An estate is limited to A. for life, remainder to the right heirs of G. S., who is living at the time the limitation takes effect. G. S. dies, leaving B. his eldest son and heir at law; B. devises his contingent interest to C.; A. dies. Is the devise by B. valid at the present day?

Q.—The vendor and purchaser of a reversion respectively labour under disadvantages which materially decrease the value of a reversion; what are those disadvantages? and how can they or either of them be overcome by any, and if any, what means?

Q.—Explain the difference between remainders, springing uses, and executory devises. Land is devised to trustees for 500 years, remainder to the first and other sons of A. in tail, remainder to B. in fee. A. has no son at the testator's decease; is the limitation to A.'s sons valid?

Q.—An estate is limited to A. for life of C., remainder to B. for life, remainder to D. in fee. A. surrenders to B.; B. dies, living C. Does D.'s remainder vest in possession?

Q.—“A fee cannot be limited on a fee.” How do you reconcile this doctrine with the validity allowed to limitations in a fee on a contingency with a double aspect?

Q.—An estate is granted by deed to A. for life, with remainder to his heirs male. What estate does A. take under the grant?

Q.—Explain and illustrate the difference between a conditional limitation and a contingent remainder.

Q.—Prior to 1834, what power of alienation at law had the owner of an executory or contingent fee?

Q.—A., by his will, gives his real and personal

estate (the real estate comprising both legal and equitable interests in land) to his wife for life, and after her death to his children, who shall attain 21, in equal shares. At A.'s death he has seven children, of whom John has alone attained 21. At the widow's death two others, William and Mary, have attained 21, the rest being minors. John dies intestate in the life-time of his mother, the widow. At the death, who are entitled to the testator's real and personal estate?

Q.—What is the Common Law rule as to covenants running with the reversion, and what important variation of the rule was made by an early act of parliament?

Q.—Was the law with respect to the destructibility of contingent remainders applicable to contingent remainders in copyhold hereditaments, or to contingent remainders in equitable estates in freehold hereditaments? Give the reasons for your answer.

### *Powers.*

Q.—How many kinds of powers are there? Give examples of each kind.

Q.—A tenant for life, with a power of leasing in possession, desires to raise a sum of money upon the security of his life interest. How is the mortgage usually framed so as to prevent any question arising as to the future exercise of the power?

Q.—Has the act for the Abolition of Fines and Recoveries made any alteration in the exercise of the powers given to married women? Land is devised to such uses as A., a married woman, shall appoint, and in default of appointment to her in fee. Can A. make a good title to a purchaser without the concurrence of her husband?

Q.—What is the origin and nature of the usual powers of sale and exchange inserted in settlements of real estate? How are they framed so as to avoid any infringement of the rule against perpetuities?

Q.—State the general principle, as laid down in *Alexander v. Alexander*, upon which the courts deal with the excessive execution of powers, and give a few examples of cases in which the courts have supported the execution of powers where the donee has exceeded the terms of his power.

Q.—Explain the principle on which powers of revocation and new appointment operate?

Q.—What is the difference in the mode of their operation between—1. Common Law powers and statutory powers not by way of use; 2. Powers operating under the Statute of Uses? How would limitations of use, affecting the legal fee contained in instruments exercising each of those classes of powers, take effect and be construed?

Q.—What is meant by a power operating under the Statute of Uses? Illustrate your answer by examples, and point out the difference between general and particular powers of appointment.

Q.—An estate is conveyed to such uses as B. shall appoint, and in default of appointment to the use of C. in fee. B. appoints to A. for life, with remainder to A.'s first and other sons in tail. What difference does the appointment make in the estate which C. takes in the land?

Q.—What kind of power is that by which a married woman is enabled to dispose of property given to her separate use?

Q.—The donee of a general power appoints to his son A. for life, with remainder to his (A.'s) sons as tenants in common in fee, A. being unborn at the time the power was created. Is this a valid limitation of the property? Would it make any and what difference if the power were created by deed or will?

Q.—What act on the part of a tenant for life, who has a power of leasing in possession, will have the effect of suspending or extinguishing the power?

Q.—What is the object of giving to a tenant for life, in a settlement of real estate, a power of leasing?

Q.—An estate is settled to such uses as A. shall

appoint, and in default of appointment to uses in strict settlement. A. appoints the fee, reserving a power of revocation alone. Will the exercise of this latter power have the effect of restoring the original power.

Q.—If the donees of a power wishes the discretion in the donees to be transmissible, what is the best form of such a power?

Q.—If a particular power includes objects beyond the perpetuity line, is it under any, and, if any, what circumstances valid? Is there any, and, if any, what variation in the rule of construction in this respect when applied to general powers?

Q.—Give the different rules by which the courts are governed in construing—1. Powers of sale in settlements; 2. Trusts for sale; 3. Powers of sale in mortgages as to their exercise by the surviving donees or trustees by the real or personal representatives, or the assignees of such donees or trustees.

Q.—By marriage settlement an estate is limited to such uses as A. shall appoint in favour of his children or more remote issue. An appointment is made in favour of A.'s son for life, with remainder to the children of A.'s son in equal shares. Is the appointment valid to its full extent. If not, how would you modify it so as to make it good.

Q.—An estate is devised to trustees for a term of years upon trust to sell, and out of the proceeds of the sale to raise a sum of money; subject thereto the estate is devised to A. and his issue in strict settlement. Are the trustees justified in raising the sum required by mortgage.

Q.—A fee simple is limited to a purchaser and his heirs to such uses as the purchaser shall appoint, and in default of appointment to the use of the purchaser, his heirs and assigns. Can the power so given be executed by the purchaser? State the different opinions on the point, and give your reasons for adopting one of those opinions.

Q.—What is the principle adopted by the courts in construing instruments exercising powers in those cases

in which some unauthorised condition is annexed to the gift?

Q.—In what cases, and under what circumstances, will the doctrine *cy-près* or approximation be applied to the construction of instruments exercising powers? Show the operation of the rule in some particular cases.

Q.—In what cases and in whose favour will equity relieve against the consequences of the defective execution of powers? What are the provisions of 22 and 23 Vic., c. 35, in this respect?

Q.—What is now the law with respect to illusory appointments? A., who has a power to appoint £20,000 amongst his children (of whom he has five) appoints one shilling each to four of such children, and all the rest of the £20,000 to the fifth. Is this a valid appointment of the £20,000?

Q.—Into what classes were powers divided by Hale, C. B. in *Edwards v. Slater*? Give examples of each of those classes of powers.

Q.—May any, and, if any, which of those powers be suspended or extinguished, and by what means?

### *Incorporeal Hereditaments.*

Q.—Will tithes without being expressly named pass as appurtenant to the land out of which they issue? Suppose the land and the tithes unite in one person in the same right, will the tithes merge in the fee, or is any other, and, if any, what process necessary to their merger?

Q.—Is the right of presentation to a benefice when detached from the advowson real or personal estate? In the case of a mortgage of an advowson, or of the bankruptcy of the owner of a next presentation, to whom in each case does the right of presentation belong?

Q.—What were the propositions affirmed by the court in the case of *Sury v. Pigott*?

Q.—When are hereditaments said to lie in grant,

and when in livery? Has there been any alteration made in this respect by recent legislation?

Q.—Distinguish between *profits à prendre* and easements. For what period must a vendor prove uninterrupted enjoyment in order to show a title to either kind of property under the 2 and 3 W. 4, c. 71?

Q.—What is an advowson; and what length of title must be furnished by the vendor of an advowson on an unrestricted contract for sale.

A.—A., the owner of the fee of a close of land, by deed grants to B. “a right of way” over that close; may B. take along with him horses, cattle, or vehicles, any or which of them over A.’s close?

Q.—What is meant by emblements? How does the doctrine relating thereto affect tenant for life, for years, and at will?

Q.—How many kinds of waste are there? Is a tenant in tail punishable for waste?

Q.—Original grants are made of two rent-charges issuing out of fee-simple estates, one simply to A. in tail, the other to B. in tail, with remainder to C. in fee. A., in the one case, and B., respectively execute and enrol disentailing assurances in their own favour of their respective rent-charges. What is the result in each case?

Q.—State the different kinds of advowsons, and in what manner the churches, when vacant are filled. To what extent are resignation bonds legal?

Q.—Define an easement. In how many ways may an easement be extinguished respectively?

Q.—What is the difference between rent and interest as to the mode of their accruer? At what time of the day fixed for its payment does rent fall due? Suppose an owner in fee dies at 10 a.m. on the rent day, to whom would the rent falling due on that day belong.

Q.—State shortly the effect upon rents and annuities of the two Apportionment Acts, 11 Geo. 2, c. 19, and 4 and 5 W. 4, c. 22. Show how the operation of the

lastly-named act has been restricted by reported decisions.

Q.—In what manner must an easement be created at law in favour of B. over the land of A., and is there any difference between the rules of courts of law and equity in this respect?

Q.—How is an annual rent-charge in fee best created? Where is the sale of land, in consideration of a perpetual rent-charge most commonly adopted? What was the effect, until lately, of a release from the rent-charge of part of the land subject thereto, and what is now the law in this respect?

### *Copyholds.*

Q.—How are copyhold estates passed from a vendor to a purchaser? State which are the essential and formal parts respectively of the process.

Q.—What are the several rights generally of the lord and copyholder with respect to the timber and minerals upon and under copyhold property?

Q.—On the admittance of joint tenants of copyholds held of arbitrary manors, what fine is payable, and how is the amount of the fine ascertained?

Q.—How were entails of copyholds (held of manors in which there is a custom to entail) barred before 1834, and how are entails in such copyholds now barred?

Q.—What power of leasing has a copyholder? Do the statutes relating to uses and dower respectively apply to any, and, if any, to what extent to copyholders?

Q.—What is a reputed manor? Prior to what time must the origin of all copyhold manors be referred, and why?

### *Personal Property.*

Q.—To what maximum number are the legal owners of a British ship limited? What is the effect of an

omission from the registry of the name of any owner? and what is necessary to the completion of the title of a mortgagee of a ship or of any share therein?

Q.—What interest must exist to give validity to an insurance by one person on the life of another?

Q.—On an assignment for valuable consideration of a policy of assurance of stock in the funds, standing in the names of trustees, of a legacy, or of a debt, what should be done to perfect the title of the assignee? and is what you say should be done a necessity, or is it only advisable as a precaution against any, and what events?

Q.—What act was lately passed as to the distribution of the personal estate of an intestate? What is the effect of that act?

Q.—A. being indebted to B. in a sum of money insures his (A.'s) life to the amount of the debt in the name of B. as security; afterwards A. pays B. the debt; B. retains the policy and continues to pay the premiums. Subsequently A. dies. What are the respective rights of B., and the legal representatives of A., in respect of the policy?

### *Title by Alienation.*

Q.—Give the most important of the enactments of the statute 8 and 9 Vic., c. 106, to amend the law of real property.

Q.—Trustees under a power of sale enter into a written contract for sale and die before executing a conveyance. Can the purchaser obtain a good title from any, and if any, what persons?

Q.—Trace and explain the changes in the common form of transfer of corporeal hereditaments from a period prior to the passing of the Statute of Frauds down to the present time.

Q.—A purchase is made of a piece of land, or of a house, and nothing is said about tenure. What is the tenure assumed to be?

Q.—What length of title can a purchaser require



his vendor to show on an unrestricted contract for the purchase of fee simple lands? Has the Statute of Limitations (3 and 4 Wm. IV., c. 27) made any difference in this respect?

Q.—On an unrestricted contract for the sale of land is the vendor or the purchaser in the most favourable position? Give the reasons for your answer. In the preparation of a common purchase agreement on the sale of land, what are the principal points to be guarded against by a person advising on behalf of the vendor.

Q.—What is the doctrine of Courts of Equity as laid down in *Macreth v. Symmons*, with respect to the lien of a vendor for unpaid purchase money?

Q.—The acceptance by the vendor of security for unpaid purchase money in some cases will, in others will not, deprive the vendor of his lien. Give examples of each class of cases.

Q.—Give the heads of the common conditions of sale produced by the vendor on the offering of a fee simple estate for sale by auction, in several lots. On the sale of leaseholds for years, what is the most necessary and important special condition of sale?

Q.—What exceptions are there to the general rule that all interests in land must be created or evidenced by writing?

Q.—In what respects has the Power of Alienation by deed or will been extended by recent legislation or judicial decision?

Q.—Statutes have been lately passed affecting agricultural fixtures and emblements respectively, and a third as to mortgage debts or devised property. What is the effect of each of those three statutes, and what was the previous state of the law on those points respectively?

Q.—A purchaser on an unrestricted contract buys land, which turns out to be subject to tithes, land-tax, and quit-rents. In respect of any, and if any, which of these payments may the purchaser require compensation from the vendor?

Q.—What are the relative rights of vendor and purchaser in cases where sales and purchases are made subject to and therefore with notice of life estates, annuities, or leases, which turn out to be non-existent, or to have been obtained from the vendor by fraud?

Q.—Suppose a purchaser to pay part of his purchase money before the execution of his conveyance by the vendor, has the purchaser any, and if any, what security?

Q.—In a transaction between vendor and purchaser, what is the point of time at or before which it is important to prove notice to a purchaser of an incumbrance upon the purchased property? Suppose a purchaser to receive notice after the point of time last referred to, what are the purchaser's rights as to getting in prior incumbrances, and thereby improving his condition?

Q.—Give a definition of *constructive notice*. Under what circumstances is a client bound by notice to his counsel or solicitor?

Q.—Give the heads of a common contract between A., vendor, and B., purchaser, for the sale and purchase of an acre of fee simple land.

Q.—On an unrestricted contract for the purchase of land, what are the rules as to the custody and covenants for production and furnishing copies of deed and evidences of title, and as to the costs of those covenants and copies respectively.

Q.—In what cases, if any, may a good title to land be obtained against legal and equitable incumbrances, or either of them, under the following circumstances:—1. Where the vendor has notice; 2. Where the purchaser has notice; 3. Where both vendor and purchaser have notice?

Q.—Land occupied by a tenant is purchased. C. what rights of the tenant is it assumed that the tenant is notice to the purchaser?

Q.—State and explain the rules with respect to the several records and registers of deeds, crown debts, legal and equitable proceedings, judgments and decrees.

against owners of land, being or not being notice to a purchaser, and show what are the advantages and disadvantages to a purchaser of searching or omitting to search those records and registers respectively.

Q.—Give concisely the heads of a common contract for the sale by A. to B. of a house of the tenure of leasehold for years.

Q.—A grant is made by deed of a mill or factory, nothing being said about fixtures. What kind, if any, of machinery or fixtures would pass to a grantee. And if the grant were by way of mortgage, would registration under the recent Bills of Sales Act be necessary?

Q.—Real estate is settled on a father for life, remainder to his eldest son in tail. The father and son join in an enrolled deed, barring the entail and limiting the estate to the father in fee. The father afterwards sells to a purchaser. Can the father make a good title, or would you make any, and, if any, what requisition on behalf of the purchaser?

Q.—Upon what principle do Courts of Equity profess to act in deciding whether those courts will or will not decree the specific performance of contracts?

Q.—Will Courts of Equity decree specific performance of contracts for the sale and purchase of any, and, if any, what kinds of property, other than real property or chattels real.

Q.—What are the difficulties relating to title on the part both of the vendor and purchaser attending the sale and purchase of an estate in reversion, and how are those difficulties on each side best met or removed?

Q.—What damages at law can be recovered from a vendor by a purchaser:—1. Where the contract has been rescinded; and 2. Where the contract is affirmed?

Q.—Are there any circumstances in which, in cases of suits for specific performance, the rule that the unsuccessful litigant pays the costs of both sides is varied or modified?

Q.—What relief is granted by or under 22 and 23

Vic., c. 35, to a lessee in respect of breaches of a covenant to insure?

Q.—Under a charge of debts in a will dated in the present year (1863), who, under the provisions of the last-named act, can make a good title to land devised by that will in the several modes set out in the act referred to?

250 Q.—A., the owner of fee simple land, lets it to B. on a building lease for 800 years, at an annual rent of £20, which rent is known as a ground rent. A. sells the ground rent to X. What is the proper form of conveyance from A. to X.?

Q.—Under the circumstances stated in the last question, B. underlets the demised land for 799 years, at an annual rent of £100, and sells this rent (called “an improved rent”) to Y. What is the proper form of assignment from B. to Y.

Q.—Will verbal statements of the vendor or his auctioneer at an auction, varying from or qualifying the signed particulars and conditions, bind or affect the purchaser to any, and, if any, what extent?

Q.—Show to what extent, and how and by what means the real estate of a testator or intestate is now made liable to the payment of his debts, of whatever nature.

Q.—In what cases will a power of sale arise in executors by implication? A testator, after charging all his real and personal estate with payment of his debts, devises his real estate to A. in fee, and appoints B. his executor. The personal estate is insufficient for the payment of the testator’s debts. Can B. sell the real estate. Cite authorities.

Q.—Under what circumstances will a Common Law power of sale survive? Is there any statute affecting this point?

### *Title by Bankruptcy.*

Q.—What persons are subject to the Bankrupt Laws? State a few of the acts or omissions which constitute

acts of bankruptcy. What dealings with a person who subsequently becomes bankrupt are protected by the provisions of the Bankrupt Act?

Q.—To what extent is a peer or member of the House of Commons affected by the Bankrupt Laws?

Q.—Within what period after the act of bankruptcy must the petition for adjudication be filed?

Q.—In what way are the copyhold estates of a bankrupt disposed of, and dealt with under the provisions of the Bankruptcy Acts?

Q.—Are there any exceptions to the enactment that all a bankrupt's property vests in his assignees on their appointment?

Q.—A bankrupt is possessed of a lease, and of an agreement for a lease: what proceedings should be taken by the lessor that he may put himself in the best position with respect to such lease or agreement?

Q.—Two sums of £5,000 each, belonging to the intended husband and wife respectively, are settled by an ante-nuptial settlement upon the husband for life or until his bankruptcy, and, subject thereto, upon trusts in favour of the wife and children. To what extent are those trusts valid?

### *Descent.*

Q.—State the rules according to which, at the present day, the heir to an estate in fee simple is to be ascertained on the death of his ancestor, and point out the alterations in the Law of Descent effected by the 3 and 4 W. IV., c. 106?

Q.—To what extent was the half-blood admitted under the old Law of Descent? What alterations in the Law of Descent have been effected on this subject by the 3 and 4 W. IV., c. 106?

Q.—A man has a son, A., and two daughters, C. and D. A. purchases an estate in fee and dies intestate, and without issue. To whom does the estate descend, and why?

Q.—What is the difference between an heir apparent and an heir presumptive?

Q.—From what person was the descent of an inheritance traced under the old law.

Q.—In ascertaining the root of descent, has the burden of proof been shifted, and, if so, in what manner?

Q.—A purchaser of an estate in fee simple dies intestate, leaving four daughters, and no other child or issue. One of these daughters dies leaving an only son. To what part of the whole estate is that son entitled? State what difference of opinion exists on the point, and give reasons for preferring one of those opinions.

Q.—The purchaser of an estate dies intestate, leaving two daughters; a daughter dies intestate leaving a son; what is the nature of the son's tenancy?

Q.—Is the doctrine of descent founded on common or statute law?

Q.—In what respect is the 3 and 4 W. IV., c. 106, altered by the 22 and 23 Vic., c. 35?

Q.—A father dies intestate leaving him surviving, the following issue, and no more, namely, two daughters, one grand-daughter (the only child of a deceased only son), and one grandson (the only child of a deceased daughter): to whom will the real and personal estate of the father belong?

### *Title by Escheat and Forfeiture.*

Q.—Show how a remainder and a reversion respectively are affected by the law of escheat.

Q.—What is the effect of a conviction for treason, murder, or any other felony upon the real and personal property respectively of the felon?

Q.—Mention the causes that led to the introduction of the rule against perpetuities, and the restrictions that it has imposed upon the power of alienation.

Q.—Can an inalienable interest in property be given

by any, and, if any, what means to or in trust for a male?

Q.—State the general purpose and policy of 9 G. II., c. 36, and point out the restrictions thereby imposed upon the alienation of land for charitable purposes.

Q.—One of the suggestions for the amendment of the law of mortmain is “that the unrestricted privilege already possessed by testators of disposing of their pure personalty for charitable purposes should be extended to personalty savouring of the realty.” What is your opinion of the policy of this suggestion? Illustrate your answers by cases.

Q.—Against what evils were the Statutes of Mortmain directed? Does the statute of 9 G. II., c. 86, fall, strictly speaking, within that class of statutes? Mention the different descriptions of personal property that are included therein with any modern decisions on this point.

Q.—What is essential to the validity of a conveyance as against creditors under the 13 Eliz., c. 5. State the general principle deducible from the authorities as to the extent of indebtedness necessary to be proved in order to set aside a voluntary conveyance as against existing and subsequent creditors.

Q.—What are charitable—and what are superstitious uses? Give a few examples of each class.

Q.—What property may be given to a charity by will?

Q.—Explain the doctrine of *Cy-près* with respect to charities. Name a few of the institutions and corporate bodies exempt from the operation of the law of mortmain.

Q.—What is attainder, and how and when does it arise? What is the difference between escheat and forfeiture?

Q.—What are the two causes of, and what is liable to escheat?

Q.—In case of attainder for treason, or felony, what are the respective rights (as to the real and personal

property of the traitor or felon) of the crown, and the immediate lord of the fee?

Q.—State the rule against perpetuities. By what governing principle, and at what point of time, is the validity of limitations with respect to the perpetuity rule tested? If a gift is made to the members of a class, some of whom may, and others may not, be within the perpetuity line, how is such a gift construed?

*Title under the Statute of Limitations and by Prescription.*

Q.—Was any fixed period prescribed previous to the late Statute of Limitations for bringing a suit in equity? Has the act introduced any alteration?

Q.—In what manner, and to what description of property could a title by prescription have been formerly acquired at the common law? Mention the alterations introduced by statute, and the extreme periods during which rights of way must now be enjoyed, so as to render them indefeasible.

Q.—Explain and illustrate the difference between positive and negative prescription.

Q.—From what time does the period of limitation prescribed by the 3 and 4 Wm. IV., c. 27, begin to run, where the claimant is a reversioner or remainderman expectant on an estate tail? Land is limited to A. for life, remainder to B. in tail, remainder to C. in fee. B. disentails and sells to a purchaser without A's. consent. When does the statutory period begin to run as against C.?

Q.—What is the difference between a right by custom and a right by prescription?

Q.—By what length of possession and with what savings in the case of disabilities may a good title now be obtained to any land or rent? Is it necessary that such possession should be adverse; and in this respect what is the difference between the present law, and the law as it stood before the passing of the Act 3 and 4 Wm. IV., c. 27?



Q.—How many years' arrears of rent or interest may be recovered against the land? Suppose a mortgagee under a mortgage in the ordinary form were to allow the money to continue unpaid for nineteen years? What (if any) would be the mortgagee's remedies for such arrears of interest?

Q.—In the cases of express trusts and implied trusts respectively, when does the time which is to form the statutory bar begin to run in favour of the person in possession?

Q.—Give the most important enactments of the Statute of Limitations (3 and 4 Wm. IV., c. 27) with respect to land, and show how the new law differs from the old.

### *Parties to Conveyance.*

Q.—How and by what means is a corporate body enabled to hold land? Give the words of limitation in the conveyance of fee simple estates to a corporation.

Q.—By what means, and with what superadded ceremonies, is the estate or interest in land of a married woman transferred or released? In what way may land be limited, so that a married woman can dispose of the legal and beneficial estates therein without the trouble and cost of the course of proceeding above referred to?

306 Q.—Can a married woman disclaim or elect by deed, and how must such her desire be effected? Is the deed of a married woman affecting freehold property (though *not* exercising a power) good in any, and what cases without the concurrence of her husband? and what proceedings must be taken to perfect such a deed?

Q.—What is the extent of the estate and interest of a husband in his power over the following property of his wife: 1. Her Fee Simple estates; 2. Her Equitable Reversionary Choses in Action *not* settled to her separate use.

Q.—What are the rights and the powers of transfer

of the husband and wife, or either of them over the following property of the wife: 1. Her personal chattels; 2. Her paraphernalia; 3. Her legal and equitable choses in action; 4. Her legal and equitable terms of years.

Q.—What are the provisions of the statute 20 and 21 Vic., c. 57?

Q.—Real and personal property of the wife may be so settled as not to be saleable or transferable during the coverture by the husband and wife, or either of them. How would you frame such a settlement?

Q.—By what process, and with what accompanying ceremony could a married woman before 1834 have passed or released her interest in land?

Q.—Fee simple estates are duly conveyed to and to the use of a trustee in fee, upon trust for A. B., a married woman, in fee, for her separate use. What power of disposition has A. B. over the equitable fee?

Q.—Assuming generally a capacity to buy and sell real estate, give a few of the most usual causes of incompetency, and state the reasons for such incompetency.

Q.—Subject to what risks does a person who is disqualified but not prohibited from purchasing real estate, hold the real estate purchased by him.

Q.—In what cases, and under what circumstances, may the contracts of a married woman for the sale of real estate be enforced against her in equity?

Q.—What estate or interest in land in England can be held legally or beneficially by an alien?

Q.—By what process, and under what statute can an alien make himself capable of holding land in England?

### *Deeds.*

Q.—What, if any, is the effect upon the deed itself of the want of a stamp, or of a proper stamp, upon such deed?

Q.—What is now necessary to the validity of a mortgage or bill of sale of personal chattels?

Q.—Two acts have been lately passed affecting annuity deeds. What is the result of the provisions of those acts?

Q.—Give shortly the covenants usually entered into by the lessor and lessee respectively of a lease at rack-rent of a dwelling-house in a large town.

Q.—What are tortious and innocent conveyances respectively? Has any assurance at the present day a tortious operation? Give the authority for your answer.

Q.—What form of deed would you select as the best for carrying out an exchange or partition of land? Give the reasons for your answer.

Q.—How can land be effectually given to a charity, and is there in the so-called Mortmain Act any, and, if any, what provision personal to the donor, a fulfilment of which is necessary to the gift? Must the requisite lastly referred to, with respect to the donor, be fulfilled with respect to the grantor, in the case of a *bonâ fide* sale by him, to a charity for a valuable consideration?

Q.—A. conveys fee simple hereditaments to B. in fee; A. mortgages in fee similar hereditaments to C.; A. assigns leaseholds for years to D. Give the heads of the covenants for title entered into by A. in each of these transactions, and show how those covenants differ from one another. Are any, and, if any, what covenants required from D.?

Q.—A. purchases a portion of B.'s estate in fee simple, and covenants with B. that neither he or his assignees will build upon the land conveyed except in a particular manner. Explain fully the nature and extent of the equitable doctrine which enforces from a purchaser for valuable consideration from A. the performance of the covenant. Cite authorities.

Q.—Is any, and what ceremony necessary to the perfecting of a bargain and sale?

Q.—Is any consideration necessary to the validity of a deed at common law? What consideration is necessary to the validity of deeds operating under the Statute

of Uses with and without transmutation of possession respectively? And explain the reason why a use destitute of consideration arises with, but not without transmutation of possession.

Q.—There are a few cases in which technical words are absolutely necessary in assurances of real estate. What are those cases?

Q.—Are there any, and, if any, what words which will now imply covenants for title in conveyances or leases of land? How is this implication rebutted?

Q.—A. sells and conveys to B. the following estates respectively. 1. The equity of redemption of a fee simple estate. 2. A leasehold estate for years at an annual ground rent. Give the heads of the covenants usually entered into by A. and B. respectively in each of the above deeds of transfer.

Q.—E. and F. devisees in trust for sale of fee simple estates sell and convey those estates to X. in fee. Give the heads of the covenants entered into by the parties to the deed.

Q.—What are the essential parts of a deed? Explain the difference between a deed and a contract.

Q.—The owner of an equity of redemption, subject to a mortgage in fee, contracts to sell to a purchaser who pays off the mortgage debt. Draw up a scheme of the conveyance with the proper covenants.

Q.—Give examples of cases in which deeds inoperative to pass the fee simple in the manner originally intended by the framers have been held operative in another character.

Q.—Give the heads of the covenants for title by the vendor and mortgagor respectively usually inserted in a conveyance and mortgage respectively of fee simple lands. Point out the difference between the two sets of covenants.

Q.—Is the signature of a party to a deed, in addition to his seal, necessary to the due execution of that deed by him? How does a corporation execute a deed? Is the presence or attestation of one witness or more

necessary to the validity of a deed in any, and, if any, what cases?

Q.—After a lessee has assigned the demised tenement, what are his liabilities, under his express and implied covenants respectively, with regard to breaches committed both before and after such assignment?

Q.—To what extent do the benefit and burden of covenants relating to the land respectively entered into *with* the owner of the land, and *by* the owner of the land run with the land at *law*? And are the equitable rules in this respect identical with those at law?

Q.—The donee of a general power of appointment conveys to A. in fee, and enters into the usual covenants for title. Is a purchaser from A. entitled to the benefit of these covenants?

Q.—Give the rules laid down in *Spencer's* case, with respect to the forms of the lien parts of the covenants (in a demise of lands) relating to things existent and non-existent at the date of the covenants, and with respect to the liabilities of the covenantor and his assigns under these covenants respectively. Give examples in application and illustration of the rules.

Q.—Real estate is settled on A. for life, remainder to B. in fee. During A.'s life time, B. sells his remainder in fee in the estate in question to C. In what position is C. placed in case he should sell to D?

Q.—Who are the necessary parties to a deed barring an estate tail created by ordinary marriage settlement? What additional ceremony is necessary for the perfecting of the disentailing?

Q.—A mortgagee in fee dies intestate. Who are the necessary parties to a reconveyance of the mortgaged property, or a transfer of the security, and for what reasons?

Q.—What is the object of inserting covenants for title in a purchase deed? An estate is conveyed to A. to uses to bar dower. A. appoints to a purchaser in fee. Will A.'s covenants for title run with the land? Give your reasons.

Q.—In what cases, and to what extent, is the

absence of a valuable consideration fatal to the validity of a deed of conveyance? Can the apparent want of such consideration on the face of the deed be supplied by extrinsic evidence?

Q.—Mention some of the most prevalent rules for the construction of written instruments. Is the rule in Shelley's case one of construction?

Q.—A. seised in fee sells a portion of his estate to B. and covenants to produce the title deeds. A. afterwards sells the residue of the estate to C. and hands over the deeds to him. Has a purchaser claiming under B. any or what right at law or in equity as against A. or C. to compel the production of the deeds?

Q.—A trader by deed conveys and assigns all his personal estate to trustees for the benefit of his creditors. In what manner, and with what accompanying formalities, should such a deed be perfected so that the property of the trader may be the most quickly available for the purposes of that deed?

Q.—Prior to the year 1834, what were the different modes of conveyance of freehold estates at the Common Law, and under the Statutes of Uses by instruments *inter vivos*? Which of these modes may still be adopted, and by what statutes have the others been respectively abolished or rendered unnecessary?

Q.—In drawing a lease of land, in a case where the owners and incumbrancers are numerous, what is the best form of the operative or demising part, and the *reddendum*.

Q.—Define a voluntary conveyance or settlement, and give examples. A conveyance of land is made to a purchaser for valuable consideration with notice of a prior voluntary deed; how are the rights of the parties affected:—1. Where the conveyance is made by the *author* of the voluntary deed; 2. Where it is made by his heir or devisee. Cite authorities in favour of your answer.

Q.—In what cases will a voluntary conveyance be supported against purchasers and creditors? Cite cases.

Q.—Under what circumstances may a post-nuptial

settlement become valid as against subsequent purchasers. Cite authorities.

Q.—Show by what means an estate in land, to commence *in futuro* may be created by deed *inter vivos*. Can the same result be obtained in any, and, if any, what way by will?

§ 46 Q.—Where two clauses or parts of a deed are absolutely repugnant and irreconcilable, what rule of construction prevails? Apply the rule to the case of a deed where the premises and *habendum* are repugnant and irreconcilable.

Q.—A sale is made by A. a bachelor, of a piece of land for building purposes to B. (who was married before 1834) in consideration of a perpetual annual rent of £10. Give the outline of the conveyance from A. to B. What covenants are usually inserted in such a conveyance?

Q.—What powers and provisions usually inserted in a mortgage are now supplied by the operation of the act 23 and 24 Vic., c. 145?

Q.—A., who has purchased land, sells it to X.; B., to whom land has descended from his father, sells it to X.; C. mortgages both purchased and descended land to X.; D., a trustee for sale, sells land to X. What covenants for title or other covenants do A., B., C., and D. respectively give to X. under the above circumstances?

Q.—B. purchases a fee simple estate from A. and directs it to be conveyed to X. and his heirs to the use of B. for life, remainder to the use of the first and other sons of B. successively in tail, remainder over. With whom is A. to enter into the covenants for title and for production of deeds and other covenants, in order that they may run with the land? Give the reasons for your answer.

### *Conveyances at Common Law.*

Q.—What are the so-called Common Law assurances?

*Conveyances under the Statute of Uses.*

Q.—What was the theory of the modern conveyance by lease and release; and what statutes have rendered this form no longer necessary? Under what circumstances is the loss of a lease (or bargain and sale) for a year now unimportant?

Q.—Are all or any of the following limitations valid: a limitation at Common Law to A. for life, and on the expiration of one year after his decease to B. in fee? a like limitation by way of use in a deed; a like limitation in a will where A. dies before the testator; a limitation by deed or will to the use of A. in fee from Christmas next. Explain fully the principles applicable to each case.

Q.—Grant of fee simple lands to A. and his heirs, to such uses as A. shall appoint, and in default of appointment to the use, &c. There is a difference between the opinions of text writers as to the validity of this limitation. State the different opinions, and give reasons for preferring one of them.

Q.—State the objections (if any) to a conveyance to a corporation being taken by lease and release. How, prior to 1845, was such a conveyance usually taken; and in what form would such a conveyance be now drawn?

Q.—State the objections to a conveyance for a money consideration (in which conveyance there is a succession of limitations) being carried out by an enrolled indenture of bargain and sale operating under the Statute of Uses. In the case of an indenture of bargain and sale under a Common Law power, do the same objections exist. Point out and explain the difference in the operation of the two indentures.

Q.—Explain the nature of a bargain and sale, and a covenant to stand seised. Why cannot a general power of leasing be reserved to the bargainee?

*Wills.*

Q.—What was the extent of the testamentary power



over real estate previous to the passing of the Statute of Uses? When and how was the power subsequently enlarged?

Q.—Explain the doctrine of lapse. State with precision the substance of the 32nd and 33rd sections of the late Statute of Wills. Land is devised (by will made after 1837) to A. and his heirs:—A. dies before the testator. What estate does A.'s son take—1. Where A. is a stranger; 2. Where A. is the testator's son.

Q.—In what cases will marriage *not* operate as a revocation of a will made under a power of appointment?

Q.—Give a summary of the statutory rules of construction comprised in 1 Vic., c. 26. Illustrate your answer by examples, and cite authorities.

Q.—A. has power to “appoint by instrument in writing under his hand and seal.” Would A.'s will, executed according to the provisions of the New Wills Act, be a good execution of the power? Give the decisions on the point.

Q.—A will contains a specific gift of things of a perishable nature (such as wine, provisions, stores, cattle, and so on) to A. for life, with a gift over on his death to B. absolutely. How is such a disposition construed, and what would be the result if the gift were residuary instead of specific?

Q.—The vesting of the absolute ownership and enjoyment cannot be suspended beyond a certain period. Upon what principle is this policy of the law founded? Give the substance of the case by which the extreme limits of the period of suspension were defined?

Q.—Give a short statement of the case which occasioned the passing of the 39 and 40 Geo. III., c. 98, and also a summary of the provisions contained in that statute. Does the act establish to any extent the validity of a testamentary trust for accumulation, which is otherwise void as transgressing the rule against perpetuities? Give a reason for your answer.

Q.—A valid executory devise is made of land, but the event upon which the future gift is to take effect, does not happen for more than twenty-one years after the testator's death; there is no gift of the intermediate rents and profits, nor any express direction to accumulate. Does the Thellusson Act apply so as to negative the title of the devisee to the accumulations that have accrued subsequently to the expiration of twenty-one years, and before the happening of the event specified?

Q.—Can you give any instances in which technical words are absolutely necessary in a will?

Q.—By what general rule are the courts guided in deciding whether devises or gifts are vested or contingent.

Q.—By what superadded directions or limitations will a devise or gift contingent in terms (for example to A. *when* or *if* he shall attain 21) be converted into a vested devise or gift?

Q.—Define an executory devise. When was this mode of limitation first introduced? An estate is limited to A. for life, and after the expiration of one year from his decease to the unborn children of B. Is this limitation good by deed or will?

Q.—To what extent has the testamentary dominion over real estate been enlarged by means of the late Statute of Wills?

Q.—What is the primary and what is the secondary meaning of the word "issue" in a will? Does the rule in Shelley's case apply in the following examples: A devise to A. for life, remainder to the issue of A. as tenants in common, their heirs and assigns? Cite authorities.

Q.—Give the usual form of the testimonium clause to a will on more than one sheet of paper, and of the attestation to a will. As the Statute of Wills expressly enacts (section 9), that no form of attestation shall be necessary, why is the attestation usually drawn with so much precision?

Q.—Is the rule against perpetuities confined to limitations of real estate?

Q.—Show how the new law of wills differs from the old on the following points, namely, the age of the testator; the execution of wills (including testamentary appointments), and the competency of attesting witnesses; the revocation of wills; the effect of a will on after-acquired property; and the destination of lapsed or void devises.

Q.—By a will dated since 1st January, 1838, a testator possessed of fee simple estates and leaseholds for years gives all his messuages, lands, and hereditaments to A., and all his (the testator's) *personal* estate to B. Will A. or B. take the leaseholds for years? Give the reason for your answer.

Q.—A devise of the legal fee to A. for life, and after his death to the children of B. who shall attain twenty-one as tenants in common in fee. Suppose that at A.'s death; 1. B. has no child, but subsequently children are born; 2. B. has children, but no child who has attained twenty-one; 3. B. has ten children, of whom at the death of A. four have attained twenty-one and six are under that age. What is the construction of the above limitation in each of the above three cases? Would you come to the same conclusion if the limitations were of the equitable fee in land, or if the limitations were trusts of personalty? Give the reasons and authorities for your answer.

Q.—A tenant in tail in possession executes an ordinary mortgage in fee of his family estates by deed duly enrolled. By his will, on the assumption that his eldest son and heir in tail will take the entailed estate burdened only with the mortgage, the tenant in tail by his will gives all his real and personal estate to his younger children equally. Will the testator's intention be carried out on his death? Give the reasons for your answer.

Q.—Late cases have shown that it is possible for a testator to evade the prohibitions of the so-called Mortmain Act. State the plans adopted in the cases

referred to, and explain the principle upon which the devises were upheld.

Q.—What kind of property may be given to a charity by a will? Give the best form of a gift to a charitable institution.

Q.—If a will is revoked, how may it be revived? If a later will revokes a former will, and the later will is itself subsequently revoked, what effect has the last-named revocation upon the first will?

Q.—What law governs the testamentary disposition, or descent, or distribution, in case of intestacy, of leaseholds for years, situate in England, belonging to an Englishman domiciled out of the United Kingdom? State the different opinions on this point, and give reasons for adopting one of those opinions.

Q.—Is a will of real and personal property, as to its execution, form, and interpretation, governed by the laws affecting the place of the birth of the testator, or of his abode at the time of the execution of his will, or of his death, or of the place where he dies, or where the property is situated, or where the will is executed? Have any, and, if any, what alterations been lately made by statute in these respects, or any of them, as to real or personal property?

Q.—A. having manors, advowsons, land, shares, stock, furniture, pictures, money, and every other kind of property, wishes by his will to give all he possesses to B. Make A.'s will in the fewest number of words.

389 Q.—The 29th section of the 1 Vic., c. 26, has assimilated the rules of construction, applicable to testamentary gifts of real and personal estate, where there is a gift over introduced by a clause importing an indefinite failure of issue of the first taker; show how this has been effected. Land is devised (subsequent to the passing of the act) to A. for life, and in default of issue to B. in fee; what estates do A. and B. respectively take?

EQUITY.



## OUTLINE OF EQUITY JURISPRUDENCE.

*Equity jurisprudence* may properly be said to be that portion of remedial justice which is exclusively administered by a court of equity. Courts of equity afford relief in regard to those rights where the remedy at law is doubtful, inadequate or incomplete, but cannot relieve against any defect, imperfection or abuse of the law itself. Courts of equity are equally bound by precedents with courts of law, and can give no different construction to the law from that which governs courts of law.

Courts of equity act on established maxims. These maxims are: 1. Equity will not suffer a right to be without a remedy. 2. Equity will interfere where a due remedy cannot be had at law. 3. Equity will in general follow the law. 4. Equity discountenances delay. 5. Where there is equal equity, the law must prevail. 6. Equality is equity. 7. Whoever comes into equity must come with clean hands. 8. Whoever seeks equity must do equity. 9. Equity regards that as done which ought to be done. 10. Priority of time gives the better equity. 11. Equity imputes an intention to fulfil an agreement.

### *Of the Division of Equity.*

Equity jurisprudence comprises Remedial, Executive, Adjustive, Protective, and Auxiliary Equity.

### *Remedial Equity.*

*Remedial* equity comprises cases of Accident, Mistake, Actual Fraud, and Constructive Fraud.

An *accident* is any unforeseen event, misfortune, loss, act or omission, as is not the result of any negligence or misconduct in the party. Accidents are remediable in equity; if *not* (1) Accidents remediable at law; or *not* (2) Accidents neither remediable at law or in equity.

A *mistake* is any unintentional act, omission or error arising from ignorance, surprise, imposition or misplaced confidence. Mistakes are remediable in equity if made by the sufferer alone under circumstances which give rise to a presumption that there has been some undue influence, misrepresentation, imposition, mental imbecility, surprise or confidence abused. A mistake in matters of law is not remediable; but where the mistake is one of title of such constant occurrence as to be understood by the community at large, it will be remedied. Ignorance of foreign law is always remediable, being regarded as a mistake of fact. Mutual mistakes are not remediable, except in cases of mutual surprise, or where the parties supposed that the subject-matter of the contract existed, when in reality it was not in existence; or where the parties supposed that they had purchased something which the others did not intend to sell, or where the mistake is the result of a miscalculation by the defendant's agent in favour of the defendant.

On the subject of *fraud*, Courts of Equity have wisely never laid down as a general proposition, what shall constitute fraud, or the extent of remedial equity on the ground of fraud.

Fraud is divided into actual and constructive fraud.

An *actual* fraud is something done, said, or omitted, with the design of perpetrating what the party must have known to be a positive fraud.

Actual frauds comprise, 1. Misrepresentation; 2. Concealment; 3. Gross inadequacy of price accompanied with other circumstances; 4. Unjustifiable refusal of consent to a marriage; 5. Unfairness in contracts with infants, or deranged, intoxicated, or distressed persons.

*Constructive frauds* are acts, statements, or omissions



which operate as virtual frauds on individuals, or, if generally permitted, would be prejudicial to the public welfare, and are not clearly resolvable into mere accident or mistake, and yet may have been unconnected with any selfish or evil design, or may amount, in the opinion of the party chargeable therewith, to nothing more than what is justifiable or allowable. Constructive frauds comprise, 1. Frauds on public policy; 2. Frauds of persons in confidential relations; 3. Frauds on persons peculiarly liable to be imposed on; 4. Virtual frauds on individuals irrespective of any confidential relation or any peculiar liability to be imposed on.

### *Of Executive Equity.*

One branch of this department of equity comprises legacies, portions *donationes causá mortis*.

Another, and perhaps the most extensive branch of equity jurisprudence, is that of trusts.

A *trust* is a beneficial interest in, or a beneficial ownership of, real or personal property, unattended with the possessory and legal ownership thereof. Trusts are either express, implied, or constructive.

*Express trusts* are those which are evidenced by a written document. Trusts are either executed or executory. A *trust executed* is a trust which appears to be finally declared by the instrument creating it. A *trust executory* or *directory* is a trust raised either by a stipulation or by a direction, in express terms or by necessary implication, to make a settlement or assurance to uses or upon trusts which are indicated in, but do not appear to be finally declared by the instrument containing such stipulation or direction. Express charitable trusts receive a more liberal construction than gifts to individuals.

An *implied* trust is one which arises from presumption, as where a conveyance is made without a consideration, and without a use or trust, and in other cases.

*Constructive trusts* arise not from presumption but from the construction of equity, as where repairs or improvements are made by a joint owner, or a person with a defective title, and in other cases.

*The specific performance of agreements* is another branch of executive equity. By the Common Law, if a person, who ought to perform a contract or covenant, failed to do so, no redress could formerly be had, except in damages. On this ground a specific performance will be decreed in equity where damages would not afford an adequate compensation. But equity will not interfere where damages at law would amount to a complete compensation.

### *Adjustive Equity.*

One of the principal subjects of adjustive equity is that of *account*. Courts of Equity, however, will only take jurisdiction of accounts, where they consist of equitable claims, or the accounts (although cognizable at law) are complicated, or where a remedy which is or was peculiar to a Court of Equity is required. Accounts are divided into open, stated and settled accounts.

*The administration of assets* is another principal subject of adjustive equity. The application for assistance is sometimes made by the executor or administrator. Assets, that is, property available for the payment of debts of a deceased person are divided into *legal* and *equitable*. Assets are legal or equitable according as the remedy of the creditor to make them available for the payment of debts, is at law or in equity. Equitable assets include real property which the deceased had by will charged with or devised for payment of his debts, although liable for payment of them by act of parliament. There are many cases in which parties, whose right at law is confined to one fund, would fail to obtain the satisfaction of their just claims, if left to the course of law, but are enabled to obtain full satisfaction thereof by means of a particular

adjustment effected by Courts of Equity, termed the marshalling of assets. This may be defined to be such an arrangement of the different funds of the common debtor of two or more creditors as may satisfy every claim, so far as, without injustice, such assets can be applied in satisfaction thereof, notwithstanding the claims of particular individuals to prior satisfaction out of some one or more of those funds.

*Mortgages, pledges, and liens also form an important department of adjustive equity.* It may be considered as an almost universal rule, that wherever a conveyance or an assignment of an estate is originally intended as a security for money, whether this intention appears on the deed itself or by any other instrument, or even by parol evidence, and whether directly or indirectly, it will ever after be considered in equity as a mortgage, and therefore redeemable on the usual terms; though, at the time of the loan, or as part of the same transaction, there may be an express agreement between the parties that it shall not be redeemable, or that the right of redemption shall be confined to a particular time, or to a particular person, or description of persons; for such an agreement will be void. There may, however, be an absolute purchase with a right of repurchase, and either introduced into the agreement for sale at the time or made at a subsequent period.

The doctrine of *tacking* occurs where a third incumbrancer by mortgage, without notice of a second incumbrance at the time of lending his money, purchases the first legal mortgage, judgment, statute, or recognizance, even after notice of the second mortgage, so as to acquire the legal title, and holds both securities in his own right, equity will tack both incumbrances together in his favour; so that the second mortgagee will not be permitted to redeem the first without redeeming the third also, on the principle that where the equities are equal the law shall prevail. This doctrine does not apply where the incumbrancer did not originally advance his money on the immediate credit

of the land, as a creditor by recognizance. *Equitable mortgages* are created either by a written instrument or by a deposit of deeds with or without writing. A mortgage of personal property is a transfer of the ownership itself, subject to be defeated by the performance of the condition within a certain time. But a *pledge* only passes the possession, or at most a special property to the pledgee, with a right of retainer till the debt is paid or the engagement is fulfilled.

*Liens* in Equity are wholly independent of the possession of property. The usual way of enforcing a lien in equity, if not discharged, is by a sale of the property to which it is attached. The usual kinds of equitable lien are those of a solicitor for costs, of a joint tenant for the expenses of the renewal of a lease, and of a trustee on the trust estate for his expenses.

In several cases of *apportionment and contribution* assistance may be had at law. But even in these cases it may be necessary to resort to equity, instead of proceeding at law, in order to avoid a multiplicity of suits. An apportionment may be made either of a benefit, or of an incumbrance, loss, expense, or liability; and in the case of an apportionment of the latter class, a corresponding contribution is enforced consequent on such an apportionment. The most usual cases of apportionment are between different persons having distinct limited interests in an estate which is under mortgage or in a leasehold state which is renewed, or between sureties, or in questions of general average.

Election and satisfaction are two other subjects of adjustive equity. *Election* is the choice between two rights by a person who derives one of them under an instrument in which a clear intention appears that he should not enjoy both. The instances in which courts of law have put a person to his election are cases of title, which, by reason of their inconsistency, are technically incapable of simultaneous assertion; as in the case of a claim under and against his landlord. The doctrine of election arises in equity, in cases where a grantor, or more commonly a testator, gives

away, either knowingly or by mistake, that in which he has no interest, or the whole of that in which another person besides himself has an interest, and in the same instrument makes a gift of other property to the owner of the property so given away, or to the person entitled to such interest. In such cases the owner of such property, or the person entitled to such interest, cannot both take the gift and retain his own property or interest; but, if he takes the gift, he must resign his own property or interest. On the other hand, if he elects to hold his own property or interest, or, as the phrase is, if he elects against the instrument, he cannot have the gift; or at least he cannot have the entire gift without compensating the party to whom he has disappointed by electing to take his own property.

*Satisfaction* may be defined to be the making of a donation with the express or implied intention that it shall be taken as an extinguishment of some claims which the donee has upon the donor.

Equitable claims of satisfaction usually arise in three classes of cases:—

1. In cases of portions secured by a marriage settlement.

2. In cases of portions given by a will, and an advancement of the donee afterwards in the testator's life time.

3. In cases of legacies to creditors.

Partnership disputes; adjustments in cases of debtor and creditor, or of creditors and sureties; cases of set-off; damages and compensation and partition; the settlement of boundaries, and the assignment of dower are also important heads of Adjustive Equity.

### *Protective Equity.*

Under this head are comprised cases of:

1. Protection from litigation or injury, afforded by cancelling, delivering up, and securing of documents.

2. Protection from litigation respecting the property of another by means of interpleader.

3. Protection from repeated or renewed litigation, or from unjust legal proceedings afforded by decrees upon bills of peace or bills to establish wills and by injunctions.

4. Protection from loss or injury, in other cases by injunction.

5. Protection from another's absconding by the writ of *Ne Exeat Regno*.

6. Protection of property, by taking away the possession or receipt thereof, or by requiring security.

7. Protection of infants by the removal of children from their parents, the appointment or removal of guardians, the direction of a suitable maintenance where the infant is a ward of court, or the interdiction of the marriage of a ward of the court without its consent.

8. Protection of persons of unsound mind.

9. Protection of married women by enforcing contracts recognized in equity, and made between them and their husbands before or after marriage, in regard to their pin-money and paraphernalia of wives, their separate estate, or their equity to a settlement or maintenance out of their own property, or by enforcing deeds for immediate separation, so far as the principles acted on by the court, permit.

### *Auxiliary Equity.*

Under this head are comprised :

1. Discovery in aid of a suit or defence in another court.

2. The taking and preservation of testimony in aid of a suit or defence in another court as by bill to perpetuate testimony, or by bill to take testimony *de bene esse*.

## EQUITY PLEADING AND PRACTICE.

Proceedings in the Court of Chancery are either by *way of information* by the Attorney-General or other proper officer, by *bill* in the nature of a petition to the Lord Chancellor, or *without bill* as by claim, summons, or special case.

The suit is by *way of information* when it is instituted on behalf of the Crown, or of those who partake of its prerogative, or whose rights are under its particular protection, as the objects of a public charity. In all informations to enforce private rights, the proceedings are carried on in the name, and under the direction of a *relator*, who is answerable for the propriety, conduct, and costs of the suit. In all substantial respects however, an information is like a bill.

By parties not partaking of the prerogative of the Crown, a *bill* is the usual method of commencing proceedings in Chancery. A bill consists of six parts: 1. The title of the court; 2. The names of the parties to the suit; 3. The address to the Lord Chancellor or the holders for the time being of the Great Seal; 4. The name, occupation and address of the plaintiff; 5. A concise statement, divided into paragraphs, of the material facts on which the plaintiff relies, and concluding with a prayer for the particular relief required, and for general relief; 6. The names of the defendants and the signature of the counsel who drew the bill.

The objects for which a bill is filed are usually relief and discovery, and in some cases injunction.

The bill is then printed and filed, and copies served upon the defendants. In cases of despatch, as where a bill prays a writ of injunction, or of *ne exeat*, or is filed for the purpose either solely or amongst other things, of making an infant a ward of court, a written copy may be filed: in these cases, a printed copy must be filed within fourteen days, otherwise the written copy will be taken off the file, and the suit must be recommenced. On the bill for service is an endorsement either in writing or print, commanding

the defendant within eight days after service, exclusive of the day of such service, to cause an appearance to be entered for him in the office of the clerks of records and writs. Should the defendant appear, an appearance in a required form is entered in the office, and notice given to the plaintiff. If however, the defendant should not appear, the plaintiff may enter an appearance for him within three weeks, or after that time by leave of the court. The next step taken by the plaintiff after appearance by the defendant, is usually the preparation of interrogatories. The interrogatories consist of a series of questions framed from the statement of the plaintiff's case in the bill, and usually arranged in the same order. The interrogatories are generally drawn, or at least settled by counsel. At the foot of the draft interrogatories are appended the signature of the counsel who drew the interrogatories, and a note stating which interrogatories each defendant is required to answer. An engrossment on parchment of the interrogatories is then made, and within eight days from the time limited for the appearance of the defendant, filed at the office of the clerks of records and writs. By special leave of the court, however, a plaintiff may obtain further time to file interrogatories.

When the interrogatories have been filed and the defendants have appeared, as many copies are then made by the plaintiff's solicitor as there are solicitors for defendants or defendants appearing in person. Each of these copies is then compared with the original on the files of the court, and, if found correct, is marked as an office copy. One of these office copies is then served on each of the several solicitors for the defendants or on the defendants themselves if they have appeared in person.

### *The Defence.*

There are four modes of defence to a bill and these are—1. Demurrer; 2. Plea; 3. Answer; 4. Disclaimer. And all or any of these modes of defence may be joined,



provided each relates to a separate and distinct part of the bill.

A *demurrer* is employed whenever the defendant thinks that the plaintiff is not according to the case stated in the bill entitled to relief from a Court of Equity. The objections which give rise to a demurrer are usually considered to be nine in number, viz.,—

1. That the subject of the suit is not within the jurisdiction of a Court of Equity ;
2. That some other Court of Equity has the proper jurisdiction ;
3. That the plaintiff is not entitled to sue by reason of some personal disability ;
4. That he has no interest in the subject, or no title to institute a suit concerning it ;
5. That he has no right to call on the defendant concerning the subject of the suit ;
6. That the defendant has not that interest in the subject which can make him liable to the claim of the plaintiff ;
7. That for some reason founded on the substance of the case the plaintiff is not entitled to the relief he prays. To these may be added—
8. The deficiency of the bill to answer the purposes of complete justice ;
- and 9. The impropriety of confounding distinct subjects in the same bill, or of unnecessarily multiplying suits.

A demurrer always commences by a protestation against confessing the truth of any matter, so as to enable the defendant to dispute the facts alleged in the bill on any other occasion. Although bills for discovery are no longer necessary, bills for relief are usually accompanied by discovery. The grounds of demurrer to a discovery are various ; but one of the most frequent occurrence is, that the discovery, if given, would subject the defendant to penalties or forfeiture. A defendant cannot, however, demur to the discovery only unless he demur to the relief, as the discovery is considered to be incident to relief. The demurrer is signed by counsel, engrossed and filed. Notice that the demurrer has been filed is then given to the plaintiff. On receiving notice that the demurrer has been filed, the plaintiff either obtains an Order of Course to dismiss the bill with costs, amends his bill, or sets

down the demurrer for argument. If the demurrer is to the whole bill, the plaintiff is bound either to obtain leave to amend his bill and serve the order for such leave on the defendant, or to set down the demurrer for argument, and in either case within twelve days exclusive of vacations after the filing of the demurrer. Where the demurrer is to part of a bill, three weeks exclusive of vacations is the time allowed for amending the bill, or for setting the demurrer down for argument. On the day of hearing, the cause is called on in turn, when the demurrer is argued, and either allowed by the court or overruled with or without costs. If the demurrer is to the whole bill, the allowance of the demurrer will in general terminate the suit, unless leave is given to amend the bill. If the demurrer be only partial, the bill may be amended, notwithstanding the allowance of the demurrer.

A *plea* is rarely resorted to as a defence to a bill, and only in cases where the ground of defence is reduced to a single point, which does not appear on the face of the bill, as where the claim of the plaintiff is barred by the Statute of Limitations, a release, or an award. In some cases, however, leave will be given by the court to plead doubly, or offer two or more matters of defence in the plea. Pleas are of three kinds—1. To the jurisdiction of the court; 2. To the person of the plaintiff or defendant; 3. In bar of the suit. The plea is signed by counsel, and by the defendant, who has also to swear to its truth, unless it be a plea to the jurisdiction of the court or in disability of the person of the plaintiff, or a plea in bar of any matter of record, or as of record. The plea is then engrossed on parchment, and filed, and notice given to the plaintiff, who then generally adopts one of three courses. These are to *set down the plea for hearing* if the plea is *bad in law*; if the plea is *good in law but untrue* in fact, to *reply*, or if the plea is sufficient and true, but the plaintiff can produce new matter, which will obviate its effect to *amend the bill*.

On the hearing of a plea, the court usually pro-

nounces one of the four following orders: that the plea be allowed simply, that the benefit of it be saved to the hearing; that it be ordered to stand for an answer with or without liberty; or that it be overruled.

*Answers* constitute the usual mode of defence to bills, and are either voluntary or compulsory. Answers are *voluntary* when no interrogatories have been delivered to the defendant, *compulsory* when he has been required to answer. The answer of the defendant contains not only the answer of the defendant to the interrogatories, but such statements material to the case as the defendant may think necessary or advisable for his defence. The answer is divided into paragraphs numbered consecutively. The answer is signed by counsel. If the defendant, not having been required to answer, do not answer, he will be considered to have traversed the case made by the bill. In preparing an answer, the general rule to be observed is that it must be precise and not evasive, or, in other words, the defendant must answer fully. Nothing but what is relevant to the defence, or what is called for by the bill, should be inserted in an answer. At the foot of the body of the answer is appended the signature of counsel, and after that the schedules, if any. The defendant is allowed fourteen days from the time of delivery of interrogatories to put in his answer. Further time to answer is, however, readily obtained. The draft answer, signature of counsel, and the schedules (if any) are then engrossed on parchment. At the end of the engrossment the defendant signs his name. The truth of the answer is then sworn to by the defendant, and opposite the defendant's signature is appended the jurat or attestation that the defendant has sworn to the truth of the answer. The answer is then filed at the record and writ clerks' office and notice of the filing given on the same day to the plaintiff. An office copy of the answer is then procured by the plaintiff. If the answer is insufficient the plaintiff will then file exceptions to it, and these are either set down for hearing, or if the defendant

should think that they will be allowed by the court he submits, and puts in a further answer. If the answer should be sufficient the plaintiff either introduces into his bill new matter by way of amendment, or he will proceed to take the judgment of the court on the truth and effect of the matters stated in the bill and answer.

There are three ways of doing so: if the plaintiff thinks that the allegations in the answer are sufficient to entitle him to a decree, and is willing to admit the truth of the answer he will set down the cause on *bill and answer*; if he wishes to rely on some parts of the answer, and contradict others he will give notice of *motion for decree*; lastly, if he denies the whole of the answer, he can do so by *filing a replication*.

A *disclaimer* renounces all title to the matter in demand. A disclaimer must be accompanied by an answer if the defendant ever had an interest in the matter in demand.

The evidence to be used at the hearing is either that of the pleadings, oral, or by affidavit. On hearing by bill and answer the only evidence is that of the *pleadings*. On motion for decree evidence by *affidavits* is used. Where a replication is filed the defendant cannot read his answer, but must prove its statements by evidence. Each answer is only evidence against the defendant, whose answer it is, except in an interpleader suit. On the question of the costs of the suit, however, each defendant is at liberty to read his answer, not only as against the plaintiff, but also against his co-defendants. After replication has been filed in a cause the evidence may, at the option of either party, be taken orally. The oral examination takes place before one of the examiners of the court, or before an examiner specially appointed by the court. The answers are taken down in writing, and at the close of the examination are read over to the witness, and signed by him in the presence of the parties. The depositions are then signed by the examiner, transmitted by him to the record office, and there filed.

Copies of the depositions are then obtained and constitute the oral evidence used at the hearing.

### *The Hearing and Decree.*

Where a cause is at issue by filing a replication a subpœna to hear judgment must be served on the defendants themselves or their solicitor, except in *consent causes*. So where a traversing note (which has the same effect as if the defendant had filed an answer traversing the whole bill) has been filed against a defendant, a subpœna to hear judgment is necessary.

The cause having been set down will appear in the paper, and in its turn be called on for hearing. The plaintiff's counsel then states the case, the matters in dispute, and reads the evidence by which the plaintiff's case is supported. The defendant's counsel adopts a similar course with regard to the defence, and the plaintiff's counsel replies. At the conclusion of the argument the judge pronounces the decree, the heads of which are taken down by the registrar attending the court, and also by the counsel on their briefs. Minutes of the decree are then bespoken from the registrar and drawn up by him. The minutes are then settled by the registrar in the presence of the parties. The settled minutes are subsequently left at the registrar's office, when the decree will be drawn up. When drawn up the decree is compared with the settled minutes and then left at the office of the registrar, by whom it is passed by marking it with his initials. The decree is then entered in the registrar's book. If desired, the decree can be enrolled within six months from its date, or afterwards by leave of the court. No appeal to the House of Lords against a decree can take place unless it be enrolled. An enrolled decree cannot also be varied by the process of rehearing, but a bill of review must be filed. Enrolment may, however, be prevented by lodging a caveat, or notice to the officer not to enrol the decree, and the service of the order for setting down the appeal. The proceedings after the decree

are usually service of the copy of the decree on each defendant, payment of money into court either before or after taking the accounts, the issue of a commission to make partition, to settle boundaries, or to assign dower. If the decree at the hearing was only *interlocutory* in its nature it will usually again be brought before the court on further consideration. The result of the accounts and enquiries directed by the interlocutory decree to be taken is brought under the notice of the court, and the decree made on this occasion is usually final, and includes the question of costs.

During the progress of a suit many incidental proceedings take place, as applications for leave for further time, or for the production of documents, orders to revive a suit, motions for injunction, or a receiver, for the issue of a writ of *ne exeat*, or for the dismissal of a bill, and petitions for the payment of money out of court.

*Proceedings without bill* comprise petitions, claims, special cases, settlements, and summary proceedings under the Trustee or Winding-up Acts, applications on behalf of charities, or by or against solicitors.

## BOOKS OF REFERENCE ON EQUITY.



Calvert on Parties to Suits in Equity.

Fonblanque on Equity.

✧ General Orders of the Court of Chancery of the 1st February, 1861, and 5th February, 1861.

✧ Haynes' Outline of Equity.

✧ Hunter's Suit in Equity.

✧ Mitford on Pleading.

Pothier on Partnership, by Tudor.

✧ Smith's Manual of Equity Jurisprudence.

✧ Spence's Equitable Jurisdiction of the Court of Chancery.

✧ Statutes 15 and 16 Vic., c. 86; 22 and 23 Vic., c. 35; 23 and 24 Vic., c. 38; 23 and 24 Vic., c. 145; 25 and 26 Vic., c. 42.

Story's Equity Jurisprudence.

✧ White and Tudor's Leading Cases.

Wigram's Points in the Law of Discovery.

## QUESTIONS ON EQUITY.

### *Nature and Extent.*

Q.—What is Aristotle's definition of Equity? By whom has it been adopted. Distinguish the various significations in which the word equity is used.

Q.—Mention the principal advantages and disadvantages which would probably arise from the fusion of the equitable with the legal jurisdiction?

### *General Maxims.*

Q.—In what manner has the jurisdiction of the court been extended by its acting *in personam*? Give instances of its acting *in rem* at the present, and at an early period.

Q.—Explain and illustrate the maxim: *Equity follows the law*. When is it applicable?

Q.—Give an illustration of the maxim: *He who seeks equity must do equity*. Are there any rights not enforceable except through its operation?

Q.—Explain and illustrate the maxim: *Where there is equal equity the law must prevail*.

Q.—In what respect is the maxim: *Jus accrescendi inter mercatores locum non habet* more extensively applied in equity than at law?

Q.—Explain and illustrate the maxim: *Equality is equity*.

Q.—Explain and illustrate the maxim: *A man must come into a Court of Equity with clean hands*.

Q.—A. seised in fee of an estate demises it for seven years; and the lease contains a clause empowering the



lessee to purchase the estate for a stated amount at any time before the expiration of the term. The lessor dies shortly after making the lease, having by his will given his real property to A. and his personal to B.: just before the termination of the lease the lessee exercises his option to purchase. Who is entitled to the purchase money? and who is entitled to the rent which became due previously to the option being declared?

Q.—Illustrate the maxim: *Equity considers that as done which ought to be done.*

Q.—State the principal exceptions to the rule: *Qui prior est tempore potior est jure*; firstly, as regards real; secondly, as regards personal estate.

### *Accident.*

Q.—In whose favour will equity aid the defective execution of a power? And on what principle is the relief afforded?

Q.—An apprentice is bound to his master for a certain number of years: shortly after the indenture of apprenticeship is executed, the master dies. Can the whole of the apprentice fee be recovered? What equitable considerations are applicable to the case?

Q.—Will a Court of Equity grant relief on a negotiable security which has been lost, and, if so, on what grounds?

Q.—Will a Court of Equity in general grant relief, where an accident, affecting the subject-matter of an agreement, has occurred which is neither provided for by the agreement, nor apparently was in the contemplation of the parties, when they entered into it? Illustrate your opinion by an example.

Q.—A tenant by his lease (for which he pays a considerable premium) covenants to insure and keep insured the premises against fire. There is a proviso in the lease that, in case any of the covenants are broken, the landlord may re-enter on the premises, and repossess them as of his former estate. The

insurance is through inadvertence allowed to expire, and shortly afterwards it is renewed by the tenant. The landlord accepts a quarter's rent after the breach of covenant has occurred, but without being informed of the circumstance. On becoming acquainted with it, he commences an action of ejectment against the tenant; is the tenant entitled to any, and what relief in equity?

Q.—A sum of stock is vested in trustees upon trust to pay the same to such person as A., a married woman, shall, by any writing under her hand, attested by a credible witness appoint; and in default of appointment, upon trust to pay the dividends to A. for her separate use during her life, and after her decease upon trust for the children of A. equally. A. and her husband sign a letter addressed to the trustees, requesting them to transfer the stock to her husband. The signatures are unattested. The trustees comply with the request. There are several children of the marriage. Have they any and what claim against the trustees?

Q.—A sum of stock is vested in trustees upon trust for such of A.'s children as he shall by deed appoint, and in default of appointment upon trust for B. absolutely. A., having several children, gives the whole of the stock by will to one of them. Who is entitled to it?

Q.—A tenant covenants to keep buildings in repair, and there is a proviso in the building lease that the term thereby granted shall cease on the breach of any covenant. The premises being out of repair, the landlord brings an action of ejectment, and obtains a verdict against the tenant. Is the tenant entitled to relief in equity?

### *Mistake.*

Q.—Distinguish between the cases of mistakes in law, and mistakes in facts, with regard to the relief afforded by Courts of Equity?

Q.—In what cases will equity grant relief upon a joint bond, as if it were a several as well joint obligation.

Q.—A. and B. who had advanced conflicting claims to an estate execute a deed of compromise by which A. in consideration of the estate being conveyed to him, releases all right to the residue. B. afterwards institutes a suit in equity to set aside the conveyance to A. on the ground that A. had in fact no interest whatever in the estate. On investigation this appears to be the case: will the deed be set aside in the absence of fraud under any, and what circumstances?

Q.—A freehold estate is devised to trustees to the use of A. for life without impeachment of waste, and after his decease to the use of his first and other sons in tail. Power is given to the trustee, with the consent of the tenant for life, to sell all or any part or parts of the land, tenements, and hereditaments so devised, for such price as to them shall seem reasonable, and to that end to revoke the uses therein-before declared; the trustees are also empowered to give receipts for the purchase-moneys.

The estate is sold by the trustees, with the consent of the tenant for life, but the timber standing upon it (which is of considerable value) is not included in the sale, because it is supposed that the tenant for life (being unimpeachable for waste) is entitled to the value of the timber. He enters into a contract for the sale of the timber with the purchaser of the estate, and grants the growing timber to him by the same deed as that by which the trustees convey the lands and buildings. The tenant for life receives the purchase-money for the timber; but, some years afterwards conceiving that he is not entitled to retain it, pays the amount to the trustees, who invest it upon the trusts declared by the will respecting the money to arise from sale of the estate. After the death of the tenant for life, can the next remainder man recover the estate at law, and will he be restrained from doing so in equity?

Q.—Explain and illustrate the rule that an equitable presumption may be rebutted by parol evidence.

Q.—A testator directs land to be purchased by his trustees, and to be settled upon trust for his daughter for life, and after her decease upon trust for the heirs of her body; and he devises lands of which he is seised to the same trustees, upon trust for the daughter for life, and after her decease upon trust for the heirs of her body. And he says that the limitations of the lands to be purchased, and of the lands devised are intended to be in strict settlement. What estate will the daughter take therein respectively?

Q.—A. sells and B. purchases a farm under the mutual mistake that it contains 30 acres, when, in fact, it contains 20 acres only. It is described in the conveyance by the names of the fields, and as containing 30 acres. By an error in transcription, one of the fields mentioned in the draft is omitted in the deed. Has the purchaser any, and what relief against these mistakes?

Q.—A. agrees to purchase a house from B., and the agreement is duly reduced into writing and signed by A. It is discovered that at the time of the agreement being entered into, the house had been destroyed by fire, although neither party to the agreement was aware of the fact. Is A. bound by the agreement in equity?

Q.—A., knowing that he has a certain claim against B., executes a release to him of all claims in the most general terms. A. afterwards discovers that he had another claim against B. at the time of executing the release. Will the Court of Chancery relieve A. against the operation of the release on this claim, if the intention with which the release was executed, can be clearly established by evidence?

Q.—Articles are entered into before the marriage, and a settlement is executed after marriage purporting to be made in pursuance of the articles, but, in fact, departing from them in material particulars. Which will prevail? The provisions of the articles

or those of the settlement? State the grounds of your opinion.

*Actual Fraud.*

Q.—In what cases will *a suppressio veri* invalidate a contract for sale?

Q.—What was the ancient rule of law as to contracts entered into by a lunatic? In what cases will they be set aside in equity?

Q.—What is the meaning of the terms intrinsic and extrinsic circumstances as applied to matters of fraud? Does the concealment of intrinsic in any, and what cases differ in effect from the concealment of extrinsic circumstances?

Q.—The owner of a mine in treating for the sale of it, represents the quantity of ore which he has annually raised as much greater than the real quantity. The person to whom these representations are made sends an agent to view the mine, and he is permitted to inspect accounts, from which the quantities of ore actually raised can be ascertained. The principal having received the report of the agent, concludes the purchase of the mine, at a price greatly exceeding the true value. Will a Court of Equity set aside the purchase at his instance?

Q.—A person makes a statement (material to a transaction about to be concluded) which he believes to be true, but which subsequently proves to be false. Another to whom the statement is made, acting upon the faith of it, concludes the transaction, and afterwards finds himself in a situation less advantageous than that in which he would have been placed if the statement had been true. Has he any, and what remedy against the person who made the statement; firstly at law, secondly in equity?

Q.—Is inadequacy of price to any, and what extent a sufficient ground in equity for setting aside a contract of sale?

Q.—On what grounds is the jurisdiction of the

Court of Chancery in matters of fraud established? Is this jurisdiction universal, or are any, and what frauds excluded from its operation?

Q.—Is imbecility (not sufficient to support a commission of lunacy) a ground for setting aside a contract or conveyance in any, and what cases?

### *Constructive Fraud.*

Q.—State the rules by which the court is guided with respect to a purchase made by a trustee from his *cestui que trust*.

Q.—What was the ancient doctrine of the court as to alienating the subject-matter of a suit *pendente lite*; and in what manner has the rule on the subject been altered by a modern act of parliament?

Q.—To what extent are conditions in restraint of marriage invalid? In what manner did the rules of the English law on the subject originate?

Q.—Is a plea of purchase for a valuable consideration without notice, a good defence against a legal title? State the reasons on which your opinion is founded.

Q.—In what cases will a settlement made by a woman previously to marriage without consent of her intended husband be set aside at his instance after marriage?

Q.—State the rules acted upon by the court relating to bargains with remainder-men and reversioners.

Q.—A solicitor takes from his client a mortgage as security for costs then due, and thereafter to become due in a suit already commenced. Costs are incurred in the suit after the execution of the mortgage. Can the solicitor enforce his security to any, and what extent?

Q.—Previously to a marriage, the intended husband in order to induce the father of the lady to give his consent, obtains the transfer into his own name of a considerable sum of stock belonging to a friend, who without the knowledge of the father, takes a bond

from the intended husband for a sum equal to the value of the stock. No settlement is made on the marriage, but it takes place under the belief on the part of the father, that the stock is the property of the husband. The wife dies without issue, shortly after the marriage. Will a Court of Equity on the application of the husband restrain an action on the bond?

Q.—A client during the progress of a suit being satisfied with the conduct of his solicitor, grants him as an additional reward for his services, a lease of property not the subject of the suit on very advantageous terms. The client dies intestate shortly after the suit is concluded, having paid the solicitor's bill of costs. Is the heir of the client entitled to have the lease set aside in equity? Is there any conflict of authorities on the point?

Q.—A solicitor purchases an estate from a client, who shortly afterwards files a bill to have the conveyance set aside. State firstly what case the plaintiff must establish (supposing that it is unanswered by the defendant) in order that the plaintiff may be entitled to a decree in his favour; and secondly, the plaintiff proving such a case, what fact or facts must the defendant prove in order to defeat the plaintiff's claim?

Q.—The owner of a leasehold estate, believing that he is in danger of being prosecuted for a felony and convicted, assigns his term to trustees for the benefit of his wife and children. Will the claim of the Crown in case of conviction prevail over that of the wife and children?

\* Q.—Two persons enter into an agreement to divide equally between themselves whatever may be left to either by another, from whom they conceal the agreement; he makes a bequest to one only. Can the other enforce the agreement in equity?

Q.—Define champerty and maintenance. To what extent does equity follow the law as regards this subject?

Q.—The tenant for life of an estate, with power of appointment to such one or more of his children as he shall think fit, appoints the whole to his eldest son shortly after he has attained 21 years of age. The father and son then convey the fee to a purchaser, and the purchase-money is by the deed expressed to be paid to both. Can the purchaser make a good title to the estate? State the reasons on which your opinion is founded.

Q.—An ante-nuptial settlement contains a stipulation in favour of a collateral who is not a party to the settlement. Is the collateral a purchaser for a valuable consideration within the 27 Eliz., c. 4? Quote authorities and state the grounds on which your opinion is founded.

Q.—Explain what is meant by constructive notice. What notice will be sufficient to render a registered instrument invalid as against a prior unregistered instrument?

Q.—Under what circumstances, and at whose instance, will a conveyance be set aside by virtue of the statute 13 Eliz., c. 5, and, if set aside, what classes of creditors will be allowed to take advantage of the decree?

Q.—Explain the changes in the law effected by the Statute of Fraudulent Devises.

Q.—A fund is settled upon trust for such of the tenant for life's children, and in such shares as he shall appoint, and in default of appointment for the children equally. He had two daughters and appoints the whole fund to one, on an understanding, but not an absolute agreement, that she will settle a moiety on her sister for life with remainder to her sister's children. The settlement is executed by the appointee accordingly and without the knowledge of her sister. The father then dies. Is the settlement unimpeachable?

Q.—An act of parliament empowers a rector, with the consent of the patron of the living, to raise money for building a new rectory house by means of an annuity for lives to be charged on the rents and



profits of the rectory. Difficulty is experienced in raising the money, and the patron himself advances it in consideration of an annuity, of as small an amount as any other person was willing to accept, being granted to a trustee for him. Can the transaction be supported?

Q.—A. conveys an estate to B., his solicitor, at an under value. A. afterwards sells and conveys by deed, for valuable consideration, such interest as he still has in the estate to C. Can C. sustain a bill to set aside the sale to B.?

Q.—In what counties are deeds relating to land now registered? Explain the advantages and disadvantages attendant on the present system of registration.

Q.—A. purchases an estate with notice of an incumbrance, and then sells it to B. who has not notice. B. sells it to C. with notice. Is the estate bound in the hands of C.? State the reasons on which the rule of the court is founded.

Q.—Pending a treaty of marriage, the intended wife makes a settlement of all her property on herself for life for her separate use with remainder to her children by a former marriage. The settlement is not communicated to the intended husband. The treaty is broken off, and the lady marries another person who is also without notice of the settlement. Is it valid as against him?

### *Legacies.*

Q.—A testator bequeaths specifically a sum of money, “due to him, on mortgage from A. B.” The mortgage is paid off in the life-time of the testator, who, upon receiving the money, reinvests it upon another mortgage security: the testator then dies. Is the legatee entitled to the amount so invested? Have the rules of the Court of Chancery, applicable to this case, undergone any fluctuations? What is the doctrine of the Civil Law on the same subject?

Q.—Real estate is devised to trustees upon trust to sell, and divide the proceeds among several persons,

some of whom die in the life-time of the testator. Are probate and legacy duties payable in respect of all or any, and what part of the property?

Q.—The executor of a testator, who has bequeathed pecuniary legacies and the residue of his personal estate, commits a *devastavit*. By whom shall the loss be sustained?

Q.—In what manner does the jurisdiction of equity to decree payment of general legacies appear to have originated.

Q.—In what courts was a suit for the payment of a legacy formerly maintainable, and in what courts can such suit now be maintained?

Q.—A testator gives a legacy of £100 to A. out of the £3 per cent. consols standing in his (the testator's) name, and he gives £100, part of the said £3 per cent. to B. The testator afterwards sells all the stock standing in his name. Are A. and B. entitled to their legacies? How are such legacies described?

Q.—What circumstances must generally concur in order that a *donatio mortis causâ* may have validity? In what respects does it differ from, and in what does it resemble a legacy?

Q.—Explain the terms nuncupative will, and when is it valid?

Q.—A testator bequeaths his personal estate in general terms to one for life with remainder over; in what manner will a Court of Equity require that this bequest should be carried into effect?

Q.—From what source are the rules applied by the Court of Chancery to questions concerning legacies chiefly derived? Give an outline of the circumstances which led to the adoption of such rules in Chancery.

Q.—In what respect does a *donatio mortis causâ* differ from a gift *inter vivos*?

Q.—A. in immediate expectation of death delivers a watch to his servant, with directions to give it to B., and to tell B. that he is to keep it in case A. dies. A. has previously made a will, by which he bequeaths

all his property to C. The watch is delivered to B., but A. has previously died. Who is entitled to it?

Q.—A testator gives a service of plate to A., and the residue of his property to B. The testator having insured the plate takes it with him on a voyage. The ship is lost with the testator and plate on board. Who is entitled to the insurance money?

Q.—The obligee of a bond under no immediate apprehension of death, writes on the back of the bond, “I hereby assign the sum of money secured by this bond to my son, A. B.” The obligee signs the indorsement and hands the bond to his son. Who is entitled to the amount secured?

### *Express Private Trusts.*

Q.—Distinguish between the trust of the English and the *Usufructus*, and *Fidei Commissum* of the Roman law.

Q.—Distinguish between executory and executed trusts; and between the rules of construction applicable to trusts of each species.

Q.—In what manner is the creation of trusts affected by the Statute of Frauds? Is any exception made to the general provision?

Q.—What consideration is sufficient to support a declaration of trust? In what light is an imperfect conveyance regarded in equity?

Q.—A testator by will directs his executors to invest a sum of money, and to stand possessed thereof upon trust to pay the annual proceeds to A. for life, and after his decease to pay or transfer the sum or securities on which it has been invested to B. The investment is made accordingly; A. dies, and more than 20 years from his death elapse without any payment to B. Is he precluded from recovering the legacy?

Q.—Mention the leading rules which have been laid down for the interpretation of precatory words in a testamentary instrument?

Q.—A testator by his will gives the residue of his

personal estate to A., and recommends him to give so much as may remain undisposed of at his decease to B. Does B. take on the testator's decease, any and what interest in his residuary estate?

Q.—A. conveys property to trustees upon trusts for sale, and out of the proceeds to pay certain creditors of A. mentioned in a schedule, but not parties to the deed; and upon further trust to pay the residue to B., who is a stranger in blood to A., and a volunteer. After the property has been sold, and both the creditors and B. have become aware of the nature of the trust-deed, A. requires the trustees to hand over the proceeds of the sale to him. Can they safely comply with this request to any and what extent?

Q.—A testator devises freehold lands to trustees upon trusts for sale, and to stand possessed of the proceeds for A. and B. equally. B. is an alien. Can the trustees, with the concurrence of A. and B., make a good title to the estate?

Q.—By a post-nuptial settlement, A. conveys a freehold house, of which he is seised in fee to trustees upon trusts for the benefit of his wife and children. He also, by the same instrument, declares that he stands possessed of a sum of stock standing in his name upon the like trusts. Subsequently for valuable consideration A. transfers the stock to B., and also for valuable consideration executes a deed purporting to convey the house to him. B., at the time of the consideration paid, has notice of the settlement. Have the wife and children of A. a remedy to any and what extent against B.?

Q.—A. is seised to himself and his heirs of a freehold house, possessed of a term of two years in another house, and has a sum of £10,000 stock standing in his name. He holds the property upon trust for B., his heirs, executors, and administrators. B. gives a parol direction (clearly established by evidence) to A., desiring him to hold the two houses and stock upon trust for C. absolutely. B. dies intestate, the property is claimed by his heir and personal representatives,

and by C. Who is entitled to the houses and stock respectively?

Q.—By marriage articles it is agreed that a freehold estate shall be vested in trustees upon trust, for the intended husband for life, and after his decease for his first and other sons successively in tail male, with an ultimate trust in favour of his heirs; and it is further agreed that a leasehold estate shall be limited on the like trusts, so far as the rules of law and equity will permit. In what manner should this agreement be executed as regards the leasehold estate?

Q.—A., previously to his marriage, covenants with trustees that he will, within one year after his marriage, pay them £1,000 upon trust for his wife, her executors or administrators, in case she survives him: he also covenants with the trustees to leave his wife, if she survives, other £2,000. The husband outlives the year, and then dies intestate and without issue, possessed of personal estate worth £6,000. To how much is the widow entitled?

Q.—A father, previously to the marriage of his daughter agrees with the intended husband to leave by will £5,000 for the benefit of his daughter for life, and at her death to be divided among her children. The husband agrees to pay on the death of the father a like sum to trustees on similar trusts. The terms of the agreement between the father and husband are never reduced into writing. The father dies, having by will bequeathed the whole of his property to his children other than the daughter. The husband also dies without having fulfilled his agreement. Have the widow and her children any remedy against the estates of her husband and father respectively?

### *Charities.*

Q.—Explain the nature and extent of the jurisdiction belonging to the visitors of a charity? Does it ever exclude that of a Court of Chancery, and with what questions is it competent to deal?

Q.—In what case is the distribution of a fund devoted by will to charity, directed by sign manual?

Q.—Explain what is meant by a superstitious use; and mention the statute to which reference is made for the purpose of determining whether a use is superstitious?

Q.—What is the leading provision of the statute, and is it prospective in its operation?

Q.—A testator directs his executors to sell his leasehold property, and to lay out one half of the money so to be produced in creating a monument to himself in a particular church, and the other half in purchasing an organ for the same church. Are they valid bequests?

Q.—On what grounds has the court proceeded in determining whether uses shall be considered charitable or not? Give instances of uses with regard to which the question has been held doubtful. By what maxims has the court been guided as to enforcing charitable uses?

Q.—In what case is the Court of Chancery without jurisdiction to administer a charitable trust not void by the Statute of Mortmain? What, in such an instance, is the proper mode of proceeding?

Q.—A testator bequeaths by his will a sum of money “for such charitable purposes as he shall by codicil direct,” and dies without making a codicil. How shall the money be disposed of?

Q.—In what manner are real and personal estate given to superstitious uses applied, and on what grounds have the decisions on this subject proceeded?

Q.—What are the leading provisions of the statute of charitable uses? When was it enacted, and for what purpose is it usually referred to at the present day?

### *Implied Trusts.*

Q.—In what cases will an implied trust arise on a purchase in the name of another person? State the circumstances of the case *Dyer v. Dyer*, and the grounds of decision.

Q.—Explain the term equitable waste. Can it be committed by a tenant in tail under any, and what circumstances?

Q.—*Cestui que trust* of real estate dies intestate and without an heir. To whom does the beneficial interest in the property belong? Give reasons and quote authorities for your opinion.

Q.—A person enters into a covenant to purchase lands of a certain value, and to settle them on trusts specified in the instrument. He afterwards purchases lands, which are conveyed to himself in fee simple, but does no further act towards carrying his covenant into execution, nor does he otherwise manifest any intention to do so. Are the lands (which are of smaller value than that specified in the covenant) bound by the settlement during his life so as to prevent him from alienating them, released from the settlement to a purchaser without notice? Are they bound after the covenantor's decease, supposing them to remain until that time unalienated? Quote authorities for your opinion.

Q.—A testator gave his real estate to trustees upon trust to sell the same, and directed that the money to arise from the sale shall be considered part of his personal estate. He gives these moneys together with the residue of his personal estate to his friends A. and B. in equal shares. B. dies in the life-time of the testator. To whom does the money, which he would have taken if living, belong?

Q.—A testator devises freehold lands to trustees upon trust for A. during his life, and after his decease upon trust to sell the lands and divide the moneys thence arising equally between B. and C.; but if in the life-time of A. either B. or C. should die, then the share of him so dying is to belong to the other. A., B., and C. survive the testator, but the two last die in the life-time of A. Who is entitled to the land in equity?

Q.—A. purchases and pays for a freehold estate, but it is conveyed by his direction unto and to the use of himself, B. his son, and C. his nephew (to whom A.

does not stand in *loco parentis*) and their heirs. A. dies and afterwards B. dies, leaving C. surviving A. and B. A. and B. have made wills disposing of their real estate in favour of E. and F. respectively. Who is beneficially entitled to the estate conveyed to A., B. and C.?

Q.—A father, previously to the marriage of his daughter, promised the intended husband to give the freehold estate of D. to the daughter. No conveyance is executed, but shortly after the marriage the father gives up possession of the estate to his son-in-law. The father and daughter die, each leaving a son. Who is entitled to the estate in equity?

Q.—An estate is conveyed to A. and his heirs upon trust for B. and his heirs. A. is attainted of felony, and dies intestate. B. afterwards dies intestate and without heirs. To whom does the land belong.

Q.—A testator devises lands to A. for life, with remainder to B. in fee; and he charges those lands with a sum of £10,000, which is to be held upon trust for D. for life, and after his decease for E. absolutely. E. dies during the testator's life-time. The sum of £10,000 is raised by a mortgage of the estate, and the interest paid to D. for life. A. and B. die during the life-time of D. On D.'s decease, who is entitled to the £10,000?

Q.—An estate is devised to A. for life, with remainder to B. for life, remainder to C. in fee. A. suffers the mansion-house to become ruinous. Has C. any remedy at law, or in equity?

Q.—A legal mortgage is made to A. as a security for a sum of money expressed in the deed to have been advanced by A., but which was in fact advanced by B. A., who has the custody of the mortgage deed, deposits it as a security for the advance of a sum (equal to that secured by the deed) made to himself by C., who has no notice that A. is a trustee. A. appropriates this money, and becomes insolvent. Who is entitled to the money secured by the mortgage deed?

Q.—A father purchases an estate in the name of his son, to whom it is conveyed. Give the reasons against



admitting parol evidence to prove that the father did not intend to make an advancement, and the reasons in favour of admitting such evidence. How has the point been decided?

*Constructive Trust.*

Q.—A trustee alienates the trust estate. Will the estate be still subject to the trust under any, and what circumstances—1. If the alienee has given no consideration for the estate; 2. If he has given a valuable consideration?

Q.—A conveyance is expressed to be made in consideration of the purchaser entering into a covenant contained in the deed for the payment of an annuity to the vendor during his life. Has the annuitant a lien on the estate?

Q.—A. sells and conveys an estate to B., but does not receive the whole of the purchase-money. A judgment creditor of B. extends the land under an elegit. Has A. any, and what remedy in respect of the land?

Q.—Explain the nature of a vendor's lien. What kinds of property are liable to such lien? and in case of the purchaser's death, by whom must the lien be discharged?

Q.—A., who is seised in fee of a freehold estate, conveys it without any consideration, to B. in trust for C., the trust for C. being duly declared by B., in a separate instrument; B. conveys the property for a valuable consideration to D, who has notice that the conveyance from A. was voluntary, but no notice of the trust in favour of C. Who is entitled to the estate?

Q.—A. purchases an estate from B. and the conveyance is executed, but part of the purchase-money remains unpaid. A. dies, having devised his estate to C., and bequeathed the residue of his personal property after giving certain legacies to D. By whom shall the balance of the purchase-money be paid; 1. supposing the residue sufficient to pay all the debts, and the pecuniary legacies; 2. supposing it sufficient to pay the debts only?

Q.—A testator, who is entitled to Whiteacre and Blackacre for a term of years at a rent below the real value, bequeaths the term to A. to hold the same upon trust for B. during his life, and after his decease upon trust for C. absolutely. B. before the term has expired obtains a grant to himself of a fresh term in Whiteacre for a sum of money paid to the assignee of the original lessor; and he also obtains for valuable consideration a grant of the remainder in fee of Blackacre, expectant on the determination of the original term, from the same assignee of the lessor. B. dies shortly after the time when the original lease, if in existence, would have expired. Is C. entitled to any, and what interest in Whiteacre and Blackacre respectively?

*Trustees and Executors.*

Q.—Can a mortgage by an executor of his testator's assets to secure a debt of the executor be supported in any, and what case?

Q.—A trustee is directed to invest money on government or on real security. He retains the funds in his own hands, instead of making an investment. Will a *cestui que trust* be entitled to a decree at his option either that the trustee should account for the amount of the trust money, with interest, or that he should purchase as much three per cent. consols as the sum in question would have purchased at the time the investment ought to have been made, and account for the dividends? Support your opinion by authority.

Q.—What is meant by a specialty debt? Is it ever, and in what cases constituted by a breach of trust?

Q.—In what courts is probate now granted? What is now, and what was formerly the effect of probate with reference to real estate?

Q.—A female executrix commits a devastavit, marries, and then dies before her husband. Has a creditor of the testator any remedy against the husband at law or in equity? What is the reason of the rule on the subject?

Q.—The residue of personal estate, consisting of money and leasehold property, is bequeathed to A. upon trust for B. for life, and after his decease upon trust for C. absolutely. Mention the different ways in which it is lawful for A. to dispose of the money, and state what course he should pursue with respect to the leaseholds.

Q.—What precaution should be taken by a trustee who places trust funds in the hands of a banker, with whom the trustee keeps his own account, and why is he required to take such precaution?

Q.—A testator bequeaths a leasehold house to A., and appoints B. executor. B., although the personal assets not specifically bequeathed are amply sufficient for the payment of debts, sells the house to C., who has full notice of the will, and B. receives the purchase-money. Has A. any, and what remedy against C.?

Q.—In what respects does an executor differ from an ordinary trustee? and what is the difference between the consequences ensuing from one of several trustees joining with his co-trustees, and the consequences ensuing from one of several executors joining with his co-executor in signing a receipt?

Q.—A., entitled to a leasehold estate, assigns it, by a post-nuptial settlement, to trustees upon trust for himself for life, and afterwards upon trust for his wife and children, but remains in possession until his decease. After A.'s decease his executor, having no notice of the settlement, assigns the leaseholds to a purchaser for value, who is also without notice. Who is entitled to the property?

Q.—An executor, trustee of the residuary estate of a testator for an infant is empowered by the will to invest it on real or government securities. He employs it in trade. On attaining 21 the infant files a bill against the executor for an account of the residue. To what decree is the plaintiff entitled?

### *Specific Performance.*

Q.—When a contract is entered into by which a

person agrees to do certain acts, and not to do certain other acts, will the Court of Chancery grant any relief, if it cannot decree specific performance of the acts to be done. Mention the leading cases which have occurred on this subject.

Q.—In what cases will the court entertain a suit for the specific performance of an agreement? Will it entertain a suit for specific performance where the relief sought is payment of a sum of money.

Q.—Will the specific performance of an agreement to repair be decreed in general? Are there any exceptions to the rule?

Q.—Explain what is meant by want of mutuality in a contract? When is want of mutuality a sufficient answer to a suit for specific performance?

Q.—Explain the rule of court as to the admission of parol evidence regarding the effect to be given to an instrument or several instruments when the doctrine of equitable presumption can be applied.

Q.—Is payment of part of the purchase-money such a part performance as will take an agreement out of the Statute of Frauds?

Q.—State the rules acted on by the courts with reference to family arrangements, and the reasoning on which those rules are supported.

Q.—State generally under what circumstances specific performance will be decreed, although the plaintiff is unable to fulfil all the terms of his contract.

Q.—In what cases will the Court of Chancery decree specific performance of an agreement for the sale of personalty?

Q.—Explain and illustrate the rule: the assignee of a chose in action takes it with all the equities attached to it: should any exception be made in the case of a fund vested in a trustee?

Q.—A. enters into a written agreement with B. to sell him a certain estate, describing it as copyhold. A. afterwards discovers that it is freehold. Can B. enforce specific performance of the contract?

Q.—In what cases is time considered in equity to be

of the essence of a contract for sale? When not of the essence of the contract, in what manner should a party to the contract proceed, if he wishes to put an end to undue delay?

Q.—A contract for the sale of an estate is signed by the vendor. It is afterwards verbally agreed between the vendor and purchaser that a field, not comprised in the written contract, shall, for an addition to the purchase-money, be included in the sale. The purchaser accordingly takes possession of the field as well as the estate, but the vendor afterwards refuses to convey the field. Can the purchaser compel him to do so?

Q.—In a written contract for sale of an estate, the vendor agrees that an abstract of the title shall be delivered within a certain number of days from the date of the contract; the abstract is not delivered for several days after the time appointed. Can the purchaser successfully insist on the non-delivery of the abstract at the proper time as a ground of defence; firstly, to an action for damages sustained by breach of the agreement; or, secondly, to a suit for compelling specific performance.

Q.—A person makes a valid promise with a stipulation that in case of non-fulfilment, he shall pay a certain sum of money. Will payment of this amount be considered equivalent to performance, first at law; second in equity?

Q.—A. seised in fee of freehold property, seised as of fee according to the custom of a manor of copyholds, entitled to a sum of stock standing in his own name, and to another sum of stock standing in the name of a trustee, grants and assigns the whole of the property excepting the copyholds to his son, and covenants to surrender the copyholds to the use of the son. The grantor dies without having taken any further step. Is the gift good to any, and what extent?

Q.—A. upon the marriage of his daughter with B., verbally promises him to pay, immediately after the intended marriage £1000 to trustees, upon trust for his daughter for life, and after her decease upon trust

for her children equally; and the intended husband makes a similar promise to the father. The marriage takes place, but neither sum is paid. There are several children of the marriage, who, after the decease of their mother, file a bill against the father and grandfather, to have the two sums of £1000 paid and applied to the trusts of the settlement. Are they entitled to this relief?

Q.—Explain the terms “good,” “valuable,” and “meritorious” consideration. And state accurately what kinds of consideration are sufficient in equity to support an agreement.

Q.—In what cases is notice to a trustee necessary in order to confer priority? In what manner does the doctrine of equity applicable to such cases appear to have originated?

Q.—State the principal objections which may, in particular cases, be successfully maintained to a suit for the specific performance of an agreement, not being such objections as would be available at law, by way of defence to an action for breach of the agreement.

#### *Account.*

Q.—On what ground does the Court of Chancery entertain jurisdiction in matters of account? Will a bill for an account lie in general by a principal against his agent?

Q.—What is meant by an equitable set-off? In what cases is it allowed?

Q.—What is meant by general average; and why is it a proper subject of equitable jurisdiction?

Q.—State the principal rules relating to the appropriation of payments; in what respect does the English differ from the Roman law on this subject?

Q.—What is meant by “a stated account”? Is a plea of *an account stated* under any, and what circumstances a good defence to a bill for an account?

Q.—Leasehold property is settled upon A. for life, with remainder to B., his executors, administrators,

and assigns. A. renews the lease, paying a fine, and dies before the expiration of the lease. Can A.'s personal representatives require B. to contribute any, and what part of the sum laid out on renewal?

Q.—A. and B. are jointly indebted to a banking-house which has stopped payment. The bank is indebted to A. on his separate account to the same amount in which A. and B. are indebted to the bank on their joint account. A. transfers his credit by deed to A. and B. (in order that the debt and credit may cancel each other), and notice is given of the transfer to the bank. Is the set-off sustainable as against other creditors of the bank?

Q.—A bill being filed for a partition and account by one tenant in common against another, can the defendant be charged with an occupation rent for part of the premises of which he has been in possession with the consent of the plaintiff?

### *Administration.*

Q.—What is meant by “marshalling assets”?

Q.—Explain the term “Equitable assets.” State in what order assets of the following species are applicable to the payment of debts:—Real estate devised to be sold, and the proceeds employed in the payment of debts; chattels specifically bequeathed, and real estate which descends to the heir.

Q.—A testator devises to A. lands, “subject to a mortgage” and bequeaths a leasehold house, and furniture to B. He leaves no other personal estate, and no debts except the debt due on the mortgage. Can A. insist that the legacy to B. or any part of it shall be sold in order to satisfy the mortgage debt?

Q.—State the grounds on which your opinion is founded.

Q.—A testator devises certain freehold lands (all to which he is then entitled) charged with the payment of his debts to A. He purchases other freehold lands after making his will which contains no residuary devise

of real estate. On his decease all his property is sold when the personalty produces £500, the freeholds charged with debts £3,000, and the after-acquired freeholds £3,500. The specialty debts amount to £8,000, and the simple contract debts to £6,000. What amount shall the specialty and simple contract creditors receive respectively?

Q.—A testator devises all his real estate to his heir, and gives several pecuniary legacies which he does not charge upon his real estate. The personalty is exhausted in payment of debts by specialty and simple contract. Can the legatees obtain payment of their legacies?

Q.—A. dies intestate, leaving a wife, a first cousin, and a great-nephew, but no issue or other relations. In what manner shall A.'s personal estate be divided? State the general rules applicable to the case proposed.

Q.—A testator bequeaths all his personal estate to A., and devises his real estate to trustees upon trust to sell, and out of the proceeds to pay his funeral and testamentary expenses and debts, and to pay the residue to B. Will the personal or real estate be held, the primary fund for the payment of debts?

Q.—A. mortgages leaseholds to B., and pledges chattels personal to C. By his will, after mentioning the mortgage and pledge, he bequeaths the leaseholds "subject to the mortgage" to D., and the chattels personal "subject to the lien" to E., and makes F. residuary legatee. The testator leaves personal property, not specifically bequeathed, sufficient to satisfy all his debts. By whom shall the debts charged on the leaseholds and chattels personal respectively be borne?

Q.—A person enters into a voluntary covenant under seal for the payment of money. His assets are distributed under a decree of the Court of Chancery. In what order, with respect to specialty debts for good consideration, simple contract debts, and legacies, shall the voluntary bond be satisfied?

Q.—A., who is seised of gavelkind lands, has two



sons and three daughters. He devises the land to trustees upon trust to sell the same, and divide the proceeds equally among his daughters and second son, declaring that his eldest son shall in no event take any interest therein. One of the daughters dies in the lifetime of the father, and the eldest son dies intestate, and without issue immediately after the father. The trustees sell the land. How shall the proceeds be divided?

Q.—A testator commences his will by directing that his debts shall be paid. He devises Whiteacre to A. and Blackacre to B. He dies intestate as to Greenacre, another freehold estate, of which he is seised in fee. The three estates are worth £4,000, £3,000, and £2,000 respectively. The testator leaves personalty, not specifically bequeathed, by his will worth £1,000, and his debts amount to £4,000. Out of what property shall they be satisfied?

Q.—A testator devises an estate to A. charged with the payment of the testator's debts which amount to £1,500; he devises an estate to B. charged with legacies amounting to £800; and he devises another estate to C. The three estates are freehold, and worth £1,000 each, and the testator has no personal estate. What will A., B., and C. receive respectively?

Q.—A testator, who is entitled to leaseholds worth £1,000 and to other personal property of the same value, bequeaths a legacy of £1,000 to a charitable institution. He dies indebted to the amount of £1,200. What will the charity receive?

Q.—A testator gives to A. a legacy of £1,000 which the testator charges upon his real estate. He gives another legacy of £1,000 to B., but without charging it upon real estate. The personal estate produces £800. The debts amount to £500. The real estate is of ample value. How much shall the legatees receive?

Q.—Will an equity of redemption in freehold lands be considered in all, or any, and what cases as equitable assets?

Q.—A testator bequeaths £2,000 to A., and gives a

freehold estate worth £1,000 to B. He has another freehold estate worth £500, not devised by his will, which descends to his heir. His personal estate amounts to £300 and his debts to £600. What will A. receive?

Q.—A testator bequeaths his library to A. charged with the payment of the testator's debts, and his furniture to B. By whom shall the debts be borne: firstly, if the will contains a bequest of the residue; secondly, if it contains no such bequest?

### *Legal Mortgages.*

Q.—Explain the essential provisions of a legal mortgage: At about what period and in what cases did Courts of Equity begin to relieve against the strictness of the law as to redemption? State generally the distinctions contained in decrees for foreclosure, conditional, and absolute.

Q.—A mortgage in fee, with power of sale, sells part of the mortgaged estate during the life of the mortgagor, and the remainder after his decease. It is provided by the mortgage deed that the surplus shall be paid to the mortgagor, his executors, or administrators. To whom should the mortgagee pay the surplus; first, in case the produce of the first sale was more than sufficient; next, in case the second sale was also necessary?

Q.—It is stipulated by marriage articles that an estate, of which the intended husband is seised in fee, shall be settled to the use of the intended husband and the heirs of his body by the intended wife. The marriage takes place, but no settlement is executed. The husband mortgages the estate to one who has notice of the articles, and devises all his real estate to a stranger and dies. The mortgagee files a bill of foreclosure against the eldest son of the marriage. What decree will the court pronounce?

Q.—A. lends money to B. on his personal security. B. has previously (without A.'s knowledge) made a

first and second mortgage of an estate. A. obtains judgment on his debt, and then purchases the first mortgage, taking a transfer to himself. Can he tack his judgment to the mortgage debt: firstly, independently of the statute 1 and 2 Vic., c. 110; secondly, by virtue of the statute?

Q.—B. takes a transfer of a mortgage debt and security from A., the original mortgagee paying a sum less in amount than the original mortgage debt. B. files a bill of foreclosure. For what sum will a person interested in the equity of redemption, or having a charge on the estate subsequent to that of A. be in general entitled to redeem. Are there any, and what exceptions to the rule?

Q.—A first mortgagee purchases the equity of redemption from the mortgagor, there being a second mortgage on the estate. To what decree in equity against the first mortgagee, is the second mortgagee entitled? And why is he so entitled?

Q.—Explain, “once a mortgage always a mortgage.” In an ordinary foreclosure suit has the Court of Chancery authority to direct a sale instead of a foreclosure, at the instance of the mortgagor, without the consent of the mortgagee? And, if so, whence is such authority derived?

Q.—Mention the circumstances which have been relied on as showing that an instrument, in form a purchase with a condition to re-purchase, is in fact a mortgage. What important consequence depends on the determination of the question?

Q.—Can a bond be tacked to a mortgage against a second mortgage, in any, and what case?

Q.—A. makes a legal mortgage in fee to B. The day named in the proviso for redemption having passed, B. institutes a suit against A. for foreclosure. A. then mortgages the same estate to C. who is entirely ignorant of B.’s mortgage, and the suit to which it has given rise. B. obtains a decree of foreclosure absolute against A. Could C., according to the original principles of the court, enforce his security as regards the

estate? State the ground on which your opinion proceeds, and whether any and what alteration has been made in the law on this subject.

Q.—A. makes a mortgage in fee, and dies intestate without heirs. To whom does the equity of redemption belong, and is it subject to any and what charges?

Q.—A freehold estate is devised to a married woman and her heirs. She and her husband mortgage the estate by a deed which the wife acknowledges separately, to secure a sum of money advanced to the husband which he covenants with the mortgagee to repay: according to the proviso for redemption the mortgagee is to convey unto and to the use of the husband and his heirs. The husband dies intestate leaving personal estate sufficient to pay all his debts, including the mortgage debt. Who is entitled to the estate? By whom must the incumbrance be borne?

Q.—A. obtains judgment in an action at law against B. and registers the judgment; B. subsequently enters into and signs in consideration of money advanced by C., with notice of the judgment, a written agreement, that B. will execute to C. a mortgage of a freehold estate, of which B. is seised for an estate of fee simple. Before any further step is taken, A. sues out an *elegit* and obtains possession of the estate. Is he entitled to retain possession until he has received the amount due on his mortgage?

Q.—A. mortgages an estate to his bankers as security for a balance then due to them from him, and for any future advances which they may make on his account. A. then mortgages the same estate to B. who has no notice of the bankers' security. They, with notice of B.'s security, afterwards make further advances to A. Are the bankers entitled as regards these advances to priority over B.'s mortgage? Would the bankers have priority if B. had notice of the bankers' security?

Q.—A mortgagee, after the day named in the covenant for payment has passed, requires payment of the mortgage money and interest within one month. The mortgagor does not pay within the month, but on

the day after the month has expired, tenders principal and interest up to the day of tender. The mortgagee requires six months' interest in addition. Is he entitled to receive it?

Q.—State particularly in what mode or modes the account of interest is taken in a suit to redeem against a mortgagee in possession?

Q.—B., at A.'s request, agrees to advance him a sum of money on mortgage of real property, to which A. is legally as well as equitably entitled. The mortgage is executed, but, before advancing the money, B. requires that the title deeds of the property should be handed over to him. A. makes a reasonable excuse for their non-production, with which B. is satisfied, and advances the money accordingly. He afterwards discovers that A., previously to the execution of B.'s mortgage, had deposited the title deeds with C., in order to secure a loan made by C. to A. What are the rights of C. and B. in the mortgaged property?

Q.—A. demises land to B. as a security for a debt, with a proviso for redemption on a particular day, and covenants with B. to pay on that day the amount with interest. The mortgage is silent respecting a power of sale. Mention the various remedies by which B. can enforce payment after default.

Q.—A., seised in fee of an estate, conveys it to B. and his heirs, subject to a proviso for redemption on repayment by A. of a sum of money advanced to him by B. A. afterwards mortgages the same estate to C. B. dies, having devised the estate, and bequeathed the mortgage-money to D., whom B. also appoints his executor. B.'s estate, independently of the mortgage-money, is sufficient for payment of his debts. D. advances a further sum to A. on the same security without notice of C.'s mortgage. Can D. tack the further advance to the original debt as against C.?

Q.—A. devises all his lands to B. and his heirs. Will land, of which A. was seised in fee simple as mortgagee, pass under this devise? State the leading rules applicable to this subject.

Q.—Can a mortgagee tack a simple contract debt to his mortgage in any, and what circumstances? and as against whom?

Q.—A. mortgages Whiteacre and Blackacre to B. A. afterwards mortgages Blackacre alone to C. B. files a bill of foreclosure against A. and C. Sketch the form of the decree.

### *Equitable Mortgages.*

Q.—One seised in fee of an estate conveys it to trustees upon trusts for the benefit of his wife and children. He afterwards deposits the title-deeds of the estate as security for a sum of money advanced by a person who has notice of the settlement. The deposittee institutes a suit against the depositor, his wife and children, for the purpose of enforcing the security. Is he entitled to any, and what relief?

Q.—Is any liability, under the covenants contained in a lease, incurred by taking a deposit of the lease as a security, and what are the remedies of the deposittee?

### *Lien.*

Q.—The purchaser of an estate pays for it by means of a cheque. The vendor executes the conveyance (by which the purchaser is released from the purchase-money) and signs a receipt endorsed on the deed. The cheque is dishonoured, and the purchaser found to be insolvent. Has the vendor a remedy under any, and what restrictions?

Q.—A contract for the purchase of land is abandoned on the ground that the vendor cannot make a good title. Has the vendor a lien for his deposit? State the principal grounds of argument on each side of the question, and refer to decisions.

Q.—A. conveys an estate to B. “in consideration of the covenant thereafter contained”—that is to say, a covenant by B. to pay A. an annuity for the life of A.

The annuity falls into arrear, and B. dies insolvent. Has A. any remedy against the estate?

Q.—A testator directs that his executors after the death of A. shall purchase in their names a government annuity of £100 for the life of B. and pay him the annuity half-yearly. A. and B. survive the testator, but B. dies in A.'s life-time. Have B.'s personal representatives any, and what claim against the testator's estate?

Q.—A. gives a cheque of £30 to B. in order that B. may pay that sum (being the annual premium on a policy of assurance on A.'s life) to an insurance office. B. gives the cheque to his bankers with directions to place it to the credit of his own account, intending to pay the sum due with a cheque drawn by himself. Before the day for payment arrives B. dies insolvent. When B. paid in the cheque there was a balance at the bankers of £110 in his favour. In the interval between that time and his death he drew cheques to the amount of £120, and a sum of £40 was paid to B.'s account during the same period. Has A. any, and what claim on the £60. The amount in the banker's hand at the time of B.'s death; or can A. merely claim *pari passu* with the other creditors?

### *Apportionment and Contribution.*

Q.—Lands are devised to A. and B. and their heirs. A. lays out money on the land in permanent improvements. Upon his death, during B.'s life-time, can the representatives of A. maintain any, and what claim against B.?

Q.—A., B., and C. enter into a joint bond as sureties for the payment of a debt due from D. to E. A. dies, and D. having made default, B. pays the debt. Has he a claim, and of what nature, and to what amount against C., and the personal representatives of A. respectively?

### *Partnership.*

Q.—A partnership was formed of five persons, one

of whom died, and the other four parties continued in the partnership, and afterwards became bankrupt: the creditors of the four surviving partners sought to have the debts of the five paid out of the assets of the deceased partner, so that the estate of the four bankrupts might be thereby increased. What under these circumstances was the decision of the court, and the reasons upon which it was grounded?

Q.—Two solicitors are in partnership together. A sum of money is paid to their joint account at their bankers, by a client to whom A. has undertaken to find an investment. A. afterwards represents to the client that the money has been invested on mortgage, and for many years pays him money equal to the interest which, he is told, is secured by the mortgage deed. The money has in fact, never been invested, but has been applied by A. to his own use. B. has no further knowledge of the transaction than he might obtain by an inspection of the account of the firm with the bankers. A. becomes insolvent, and the non-investment of the money is discovered. Is B. liable to make good the amount to the client?

Q.—Is probate duty payable in respect of land purchased with partnership property, and for partnership purposes. State the grounds on which your opinion is founded.

Q.—A., B. and C. who are partners in trade, execute a joint bond to secure a partnership debt. They execute another joint bond as sureties for a person employed in an office of trust, who becomes a defaulter. A. dies. Is there any equity against his estate upon the bonds, or either of them?

Q.—A. gives B. his partner a promissory note for an amount found due to him from A., on a settlement of the partnership accounts. B. proceeds at law to enforce payment of the note. Can A. obtain an injunction against the proceedings on the ground that since the note was given, there have been various transactions, the account of which must be taken before the amount due from A. to B. can be ascertained?



Q.—A., B. and C. carry on business in co-partnership. A. retires; B. and C. by deed jointly covenant to indemnify A. against the debts then due from the firm. C. dies, and B. becomes insolvent. A. is compelled to pay a debt due from the firm when he retired. Has he a right to be indemnified out of the assets of C.?

Q.—A., B. and C. carry on business in co-partnership as bankers. C. dies, and at the time of his decease, D., a customer of the bank, has a balance of £1000, to the credit of his account. The banking business is carried on without alteration by A. and B., after the death of C. D. pays £500 to the credit of his account, and afterwards draws out £800. B. dies, and the bank stops payment. Has D. any, and what remedy, and to what amount, against the estates of B. and C. respectively?

Q.—On what grounds does the Court of Chancery exercise jurisdiction in matters of partnership, and in what cases will it decree the dissolution of a partnership?

Q.—Partnership debts are considered in equity as joint and several. Explain accurately the meaning of this rule and the grounds on which it has been adopted.

Q.—A. and B. not previously partners in trade, purchase a freehold estate, with the view of dividing it into small lots, and selling them at a profit. The purchase-money is advanced by A. and B. in equal shares, and the land is conveyed to them and their heirs. A. dies in B.'s lifetime intestate, leaving a widow, a son, and a daughter. No sale of the land has taken place. Who is entitled to it at law and in equity?

Q.—What is the ordinary test of the existence of a partnership in trade? Are partners in trade necessarily part owners of the stock in trade? Would a stipulation that a partner shall be entitled to a share in the profits, but not liable to any part of the losses arising from the partnership transactions be valid to any, and what extent?

Q.—One of two partners in trade dies. What

remedies, and against whom, has a creditor of the firm for the recovery of his debt at law and in equity?

Q.—Three persons, partners in trade for a term of years, and entitled to equal shares in the profits, purchase land with money belonging to the partnership, for the purpose of erecting upon the land buildings, to be employed in their trade. The land is conveyed unto and to the use of the three and their heirs. One dies intestate, leaving a wife, a son, and a daughter. Who is entitled to the share of the deceased partner in the purchased lands, the articles of the partnership being silent on the subject?

### *Sureties.*

Q.—What are the general rights of a surety who pays off the bond of his principal? Apply this doctrine to the case of a joint bond executed by a principal and his surety, and show whether the surety who has paid the bond in the life-time of the principal is to be considered as a specialty, or a simple contract creditor.

Q.—In what respects do the rules of law and equity differ as regards contribution between co-sureties?

Q.—B. becomes surety for the payment of a debt by A. on a day certain. The creditor afterwards agrees with A. that the time for payment of the debt shall be extended, stipulating with A. that B. shall not be discharged from his suretiship. B. is not a party to that transaction. Is he still bound by his agreement? State the reasons on which your opinion is founded.

Q.—A creditor does not make to a surety, on his entering into the suretiship, a full disclosure of the circumstances calculated to influence the conduct of the surety with regard to entering into the contract. Is the contract void as a general rule? Refer to decisions on this subject.

Q.—A principal releases one of several co-sureties. Are the others released? Is there any distinction between the rules of law and equity on the subject?

Q.—A. and B. are joint makers of a promissory note, but B. signs the note merely as surety for A., a fact which is known to the promisee. B. dies in the lifetime of A. Has the promisee any remedy against B.'s personal representatives; firstly at law, secondly in equity?

Q.—A. agrees to lend B. a sum of money on condition that C. shall become surety for the debt, and that B. shall deposit the title-deeds of an estate with A. as a collateral security. C. duly enters into a contract of suretiship, and the deeds are deposited with A.; but C. is entirely ignorant that the deposit has been made, or that there has been any agreement respecting it. A. afterwards (without consulting C.) returns the title-deeds to B. and subsequently commences an action against C. on his contract. Can C., to whom the transaction respecting the title-deeds has become known, avail himself of it at law or in equity as a defence to the action?

Q.—A. accepts a bill of exchange for the accommodation of B., the drawer. The note is discounted by C., and indorsed to him by B. As a security for the payment of the bill when due, B. deposits Exchequer bills of greater value than the amount of the bill of exchange with A. A. and B. both become bankrupt, the bill remaining unpaid. A. pays 5s. and B. 4s. in the pound. In what manner shall the proceeds of the exchequer bills be applied?

Q.—A., B., C., and D. become jointly and severally bound to E. in a bond for £1,000. The bond is, in fact, given as a security for a sum of £1,000 advanced by E. to A. alone; B., C., and D. being merely sureties. A. also deposits with E. the title-deeds of property worth £500 as a further security. A. and C. become entirely insolvent, and the day fixed for payment having passed, B. pays the £1,000 to A. What right has B. against D. and E. at law and in equity?

Q.—A. and B. enter into a joint bond to recover a sum of money advanced by C. to A. C. agrees with B. to take two-thirds of the amount in discharge of the

bond: the two-thirds are paid, and C. releases his claim against B. A. dies. What is the nature and amount of the debt due from his estate to B.?

*Penalties and Forfeitures.*

Q.—Upon what principle does the Court of Chancery grant relief against the enforcement of a penalty?

Q.—A lessee covenants to insure the demised premises in the names of himself and the lessor, and the lease contains a proviso for re-entry on breach of the covenants. The lessee insures in the name of the lessor alone. Can the lessee make a good title to the lease?

Q.—Upon the marriage of A. with B., it is agreed that a sum of money shall be laid out in the purchase of freehold lands, to be settled to the use of A. for his life, with remainder to the use of B. for her life, with remainder to the use of their first and other sons successively in tail. C. the eldest son of the marriage is convicted of felony, and sentenced to penal servitude. Whilst he is undergoing the sentence, the survivor of his parents dies. The money has never been laid out. Does any forfeiture take place?

Q.—The tenant of a farm covenants that he will not break up or plough any part of the pasture land, and if he does he will pay an additional rent of £2 an acre for every acre broken up or ploughed. On the tenant proceeding to plough some pasture lands, the landlord files a bill for an injunction to restrain him from doing so. Will the injunction be granted?

Q.—The lessee of a house covenants to keep it insured and in good repair: and the lease contains a proviso empowering the landlord to re-enter if the covenants are not performed. Will the Court of Chancery grant an injunction against an action of ejectment commenced by the landlord; firstly, if the covenant to insure has been broken, but is complied with at the time of the action brought; secondly, if the house has been allowed to become ruinous?

Q.—Distinguish between a stipulation for a penalty

and a stipulation for liquidated damages. Mention some of the rules for determining to which class provisions of this nature belong.

### *Election.*

Q.—A testator by will made before 1st January, 1838, devised his real estate to a stranger, and gave a pecuniary legacy to his heir. The heir obtains possession of the real estate, on the ground that the execution of the will was attested by two witnesses only. Is he entitled to the legacy?

Q.—A fund is settled upon trust after the decease of A., for such of his children as are living at his decease, and in such shares as he shall appoint, and in default of appointment, or so far as no such appointment shall extend, for such children equally. He appoints one-third to each of two children who are living at his decease, and one-third to the child of a deceased child. He also bequeaths legacies to each of his two children. Upon his decease, leaving his grand-child, the two children, and no other child surviving, to what are the children entitled under the will and settlement?

Q.—A testator domiciled in England by will, made before 1st January, 1838, attested by only two witnesses, and not valid according to the law of Scotland, as a disposition of heritable property in that county, bequeaths part of his personal property to one who is his heir according to the law of both countries. Will the heir entering on the Scotch or English estate be allowed to receive the legacy also?

### *Satisfaction.*

Q.—A testator gives by his will certain sums of money for the benefit of children with respect to whom he has placed himself in *loco parentis* and their issue; afterwards, on the marriage of the children, he makes settlements in favour of them and their issue of sums smaller in amount than those given by the will, and

dies without having altered the will. What is the effect of the advancements upon the legacies?

Q.—A father dies indebted to a child for moneys received to his use; the father having by his will bequeathed a share of his residuary personal estate to the child greater than the amount of his debt. Is the child entitled to both debt and legacy? Mention the leading rules relative to this subject.

Q.—In what cases will a legacy, by the same or different instruments, be considered cumulative or substitutional? Is parol evidence admissible in determining the question?

Q.—A. on his marriage with B. covenants that at his death he will leave her £500. By his will he gives her a legacy of £300, but he makes no residuary bequest. The residue, after setting aside the £300, exceeds £3,000. Has the widow a right to claim the £500, the £300, and her share of the residue, or to what is she entitled? State the grounds of your opinion, and quote authorities.

Q.—A testator by will directs his executors to purchase, in their names or in that of A. (a stranger), from some insurance company in England an annuity of £100 for A.'s life, and bequeathed the same to him. By a codicil, he directs his executors to purchase an annuity of £100 from some insurance office in England and Ireland, to be paid by such company to A. for life. Are the legacies cumulative or substitutional?

Q.—A debtor bequeaths his creditor a legacy smaller in amount than the whole debt. Shall the legacy be taken as a satisfaction *pro tanto*?

Q.—A testator by will bequeaths one year's wages to the servants who shall be living at his decease, and by a codicil he bequeaths one year's wages to the servants who shall be living with him at his decease. Are the servants entitled to both legacies?

Q.—A. by settlement made on his marriage covenants with trustees to lay out £10,000 in the purchase of lands, and to settle them on himself for life, with remainder to the sons of the marriage successively in tail,

with remainder to his own heirs. The wife dies in the life-time of the husband without ever having had issue, and then the husband dies intestate. Soon after the marriage he had laid out £4,000 in the purchase of lands, which were conveyed to himself and his heirs, and so stood limited at his decease. A.'s heir claims the land purchased and £10,000 out of A.'s personal estate. To what is the heir entitled?

- 250 Q.—A debtor leaves a creditor a legacy larger than the amount of the debt, and a creditor leaves a debtor a legacy larger than the amount of the debt. What can the legatee claim in each instance.

### *Partition and Boundaries.*

Q.—Explain the distinction between the modes of effecting a partition at Common Law, in Equity, and by the inclosure commissioners?

Q.—Upon what principle has the jurisdiction of the court to determine a question relating to a disputed boundary between two provinces in America been supported?

Q.—In what cases will the Court of Chancery interfere to settle confusion of boundaries?

### *Cancellation of Instruments.*

Q.—In what cases will a written instrument be decreed to be delivered up by the Court of Chancery?

Q.—In what cases will the Court of Chancery decree the cancellation of an instrument which is void at law?

### *Interpleader.*

Q.—According to the general rule could a bill of interpleader be maintained by a sheriff against a creditor, claiming money received by the sheriff for the sale of goods, under a writ of *fi-fa* issued by virtue of a judgment obtained by the creditor, and against another person who claims the money on the ground that he, and not the debtor, was the owner of the goods sold?

Q.—In what cases will a bill of interpleader lie in equity, and by what document must it be accompanied?

Q.—A. deposits goods in the hands of a factor. B. requires the factor to deliver up the goods, alleging that the goods belong to him (B.), and that A. had not, at the time of the delivery, any interest in them. Can the factor, who is threatened with an action both by A. and B., obtain any and what assistance in equity?

### *Bills to establish Wills.*

Q.—In what manner is the jurisdiction of a Court of Equity to establish a will against an heir at law exercised, and on what grounds has it been supported?

Q.—A testator (whose personal estate is sufficient for the payment of debts and legacies) devises freehold land, of which he is seised in fee to A. The heir of the testator denies the validity of the will, but takes no steps to enforce it. Can A. file a bill against the heir to have the will established by decree of the Court of Chancery? What were the grounds of the doubt entertained on this point?

### *Injunction.*

Q.—On what principle does the Court of Chancery grant injunctions to restrain the infringement of patents for inventions, and under what circumstances will such an injunction be granted?

Q.—A patentee files a bill against one, who as the patentee alleges has infringed upon the patent by selling articles differing only from those which are the subject of the patent. The bill states that the defendant has made large profits by the sale, and the interrogatories seek an account of such profits. The defendant by answer denies the validity of the patent, and also that (if the patent were valid) the articles which he has sold would be in any way affected by the patent. Is the defendant bound to set forth the account required?



Q.—A. engages with B. to act at B.'s theatre for a certain number of nights, at a fixed rate of remuneration; and further, not to act at any other theatre during the continuance of these performances. After fulfilling part of his engagement, A. refuses to act any more at B.'s theatre, and enters into a contract with another manager to act at his theatre for a part of the period, during which he had agreed to act for B. Can B. obtain relief in equity, to any, and what extent?

Q.—What jurisdiction is exercised by Courts of Equity over the publication of private letters, and upon what right does the jurisdiction proceed?

Q.—A. agrees with B. to paint a series of portraits at £100 a portrait, and until the series is completed, not to paint for any other person. A. before the series is completed, begins to paint for C. B. who has paid for the portraits which have been finished, files a bill against A., praying for a specific performance of the agreement, and an injunction against B.'s painting portraits for any one except A., until the series is completed. Will B. succeed to any, and what extent?

Q.—A testator devises a mansion-house, farm buildings, and land to A. for life, (without impeachment of waste as regards the mansion-house) with remainder to his first and other sons successively in tail, with remainder to the heirs of A. A. suffers the farm buildings to become ruinous, and begins to pull down the mansion-house. The second son files a bill against A., praying an injunction against his destroying the house, and permitting the buildings to remain out of repair, and for an account of the waste committed and permitted. Will the plaintiff obtain any, and what relief?

Q.—Does the Court of Chancery possess any criminal jurisdiction? Has it jurisdiction, in any and what case, to prevent by injunction a misdemeanor from being committed?

### *Of other Protective Proceedings.*

Q.—In what cases will the Court of Chancery compel the delivery of specific chattels unlawfully detained?

*Infants.*

Q.—Explain the origin of the jurisdiction exercised by equity judges over infants: In what judges is such jurisdiction vested, and in what manner is it conferred?

Q.—What infants are properly described as wards of the Court of Chancery?

Q.—Property is vested in trustees upon trust for children at 21, with a direction that the trustees shall, at their discretion, apply the income to the maintenance of the children during their minority. Is their father entitled to require the whole, or any part of the income, to be applied to their maintenance in any and what cases?

Q.—By what rule is the Court of Chancery principally guided in determining the religion in which an infant, whose father is dead, should be brought up?

Q.—A female ward of court marries shortly after she has attained 21, and by settlement made previously to her marriage; but, after she is of age, settles the whole of her property on her husband. Part of the wife's property consists of a fund in court, and the husband presents a petition, praying that it may be paid to him. Will the application be granted?

*Lunatics.*

Q.—Over whom does the jurisdiction in lunacy extend; to what purposes is it directed; by what judges can orders in lunacy be made; and how is this jurisdiction conferred upon them?

Q.—In what manner and at what period did the jurisdiction in lunacy originate?

*Married Women.*

Q.—A. purchases stock in the name of himself and his wife; afterwards he, by will, gives the rents of his real property and the dividends of his funded property to his wife for her life; and, after her decease, the whole to his daughter, her heirs, executors, and administrators.

On the decease of the testator, his widow claims an absolute interest in the stock and a life-interest in the freeholds. Can this claim be supported?

Q.—A sum of money is vested in trustees upon trust for A. during his life, and, after his decease, upon trust for B., a married woman, absolutely. C. is desirous of purchasing her and her husband's interest in the stock. In what manner must the transaction be conducted, in order that the purchaser may be secure? Point out the dangers against which it is necessary to guard.

Q.—A testator dies indebted to an amount larger than his personal estate, including the *paraphernalia* of his wife, and devises all his real estate to his heir. Is the wife entitled to her paraphernalia?

Q.—A rent-charge is given to a married woman, and for her separate use. She and her husband execute a deed, granting the rent-charge for her life to a purchaser for valuable consideration. The husband dies leaving his wife surviving. Is the wife entitled to the rent-charge from the decease of her husband?

Q.—Personal property is bequeathed to trustees upon trust for a married woman for her separate use, and to be disposed of as she shall direct, free from the debts, control, or interference of her husband. She dies without making any disposition of the property. Who is entitled to it?

Q.—Out of what property is a wife entitled to a settlement in equity? Can she successfully insist on a settlement out of property vested in trustees on trust for herself for life, in any, and what cases?

Q.—A. dies, having appointed an executor and *feme covert* executrix; the husband invests money, part of the estate, in his own name and that of the executor. The husband dies, and the executor appropriates the money to his own use. Is the estate of the husband liable?

Q.—Personal property is given to a trustee upon trust for a *feme sole* for her separate use in the event of marriage, but without power of anticipation; she marries without any settlement being made, and after-

wards joins her husband in assigning the property to a purchaser for valuable consideration. Is the assignment valid to any and what extent? Mention the leading decision on this subject and the doubt which prevailed previously.

Q.—A suit is instituted by an executor against a married woman, who is the residuary legatee of the testator, and her husband for administration of the personal estate. The married woman by her answer claims her equity to a settlement. The husband dies before any further proceedings are taken in the cause. Are the children entitled, as against their mother, to have a settlement executed?

Q.—Will the provisions of a deed of separation executed by husband and wife alone be enforced in equity? What are the considerations which guide the court in deciding the validity of a deed of separation?

Q.—For what *quasi* debts of a *feme covert* can her separate estate be made liable?

Q.—A husband covenants that, in the event of his wife surviving him, his heirs, executors, and administrators shall raise out of his real and personal estate an annuity of £100, payable to his wife for her life. He afterwards dies intestate. Is the widow entitled to her share in the personal estate under the statute of distributions, in addition to the annuity?

Q.—Land is devised to a *feme covert* and her heirs for her separate use. Can she dispose of the equitable fee by deed or will during the life-time of her husband? Quote authorities for your opinion.

Q.—An executrix commits devastavit both before and during coverture. Her husband dies in her lifetime; are his assets liable to make good the devastavit both before and during coverture? Does equity follow the law in this respect?

Q.—A testator by his will (made before 1st January, 1838) gave all his real estate to a trustee upon trust to permit his wife to receive thereout an annuity of £100; and he directed that a particular farm, of which he was seised for an estate of fee simple in possession,

should be enjoyed by his wife for her life, with power to dispose thereof by deed or will. And he gave his personal estate, with the rents of the residue of his real estate, to his son for life, with divers remainders over, and declared that his trustee should have authority to demise any part of his (the testator's) estate and lands for any term not exceeding 21 years. Can the testator's widow claim her dower out of all or any parts of his real estate, in addition to the benefit conferred upon her by the will? Quote authorities and state the reasoning on which they proceed.

Q.—Jewels, befitting her station in life, are presented to a married woman by her husband, and others of a similar character by her father. The husband having no jewels (except those above-mentioned, so far as they can be considered his) at the time of making his will or of his death, bequeaths "all his jewels" to his daughter. Will either, and which of the two sets of jewels, pass by the bequest? Will either, and which of them, be subject to the debts of the husband, and, if so, in what circumstances?

Q.—An agreement between a husband and wife is made to live separate from each other, with the intervention of a trustee for the wife, and the husband agrees to pay the trustee a specified annual sum for the maintenance of the wife; the husband afterwards refuses to make the payment. Can specific performance of the agreement be enforced against him?

Q.—A freehold estate is granted by deed to A. and his heirs upon trust to pay the rents to B., a married woman, for her separate use during her life, and, after her decease, A. is to stand seised thereof to the use of the heirs of B. What estate does B. take in the land?

Q.—A husband bequeaths his wife's paraphernalia to his daughter and gives all other his personal estate to his wife. What is the wife entitled to claim?

Q.—Realty and personalty are settled upon trust for a married woman for her separate use for life, and after her decease upon trust for such person as she shall by will appoint. She appoints by will to a child;

after her decease two persons, to whom she has given promissory notes for good consideration, seek to enforce payment out of the property appointed. To one of the promisees she represented herself as unmarried, to the other as a married woman. Will they succeed in establishing their claims?

Q.—A sum of stock is vested in trustees upon trust for a married woman. Her husband requests the trustees to transfer the stock to him. Will they be justified in doing so? Will they be justified in refusing the request? And in the event of their refusing, and a bill, praying the transfer, being filed by the husband and wife, what course will be taken by the Court of Chancery?

Q.—Distinguish between a wife's separate estate, pin-money, and paraphernalia. A married woman makes a will purporting to dispose of her paraphernalia and arrears of pin-money, and arrears of an annuity settled to her separate use. She dies in the life-time of her husband, with whom she has never ceased to reside. Can the bequest be sustained to any and what extent?

Q.—Is a married woman, in any and what case, entitled in equity to a settlement out of her freehold estate?

### *Discovery.*

Q.—Within what limits is the right to discovery restricted in equity? What were the points relating to discovery decided in *Hardman v. Ellames*, and what were the objections raised to that decision?

Q.—Can a right to discovery be made the foundation of a right to relief in any and what cases?

399 Q.—Explain the nature of a bill for discovery. What must appear on the face of the bill and against whom will it lie?

### *Bills to Perpetuate Testimony.*

Q.—State generally when a bill to perpetuate

testimony is maintainable. Will a bill lie to perpetuate testimony on the ground that it may be required to substantiate the right to a peerage.

*Bills to Perpetuate Testimony.*

Q.—What is meant by an examination *de bene esse*, and in what cases is it allowed?

Q.—What is meant by an examination *pro interesse suo*?

Q.—Explain the nature of proceedings in a bill to perpetuate testimony, and against whom, and in what circumstances can the testimony be employed?

Q.—What interest is sufficient to support a suit to perpetuate the testimony of witnesses?

## CHANCERY PRACTICE.

### *History.*

Q.—From what source, and in what manner did the Court of Chancery derive its origin?

Q.—On what considerations were the decisions of the earlier chancellors principally founded?

Q.—What opinion has Lord Bacon expressed as to separating the administration of equity from that of Common Law?

Q.—State the ground of objections formerly taken to the writ of subpœna. When is it supposed to have been introduced, and what is the present mode of commencing a suit in Chancery?

Q.—When does the appellate jurisdiction of the House of Lords, in matters decided by the Chancellor, appear to have originated? What remarkable controversy took place on the subject?

Q.—In what manner were suits anciently commenced in the courts of Common Pleas and Chancery? What

occasioned the difference between the two modes of procedure?

Q.—What is the general nature of the complaints on which the earliest relief in Chancery now extant are founded? Do they confirm the theory that the jurisdiction of the court originated in the assumption of authority to enforce the uses of land?

Q.—At what period does the equitable jurisdiction of the Chancellor sitting alone appear to have been first exercised, and when have the most considerable changes in the practice of the court been introduced? What is the principal distinction between the references to masters under the old system, and the adjournments to chambers under the new?

Q.—In what manner does the jurisdiction of the Master of the Rolls appear to have originated? Has any controversy ever, and when, arisen respecting it; and in what manner was the question set at rest?

Q.—What is meant by the extraordinary jurisdiction of the Court of Chancery? About what time does it appear to have been established, and what other jurisdiction is inherent in the court?

### *General Nature of Practice.*

Q.—Mention the various modes of commencing a suit in Chancery, and state generally the nature of the cases to which each is adapted?

Q.—In what case is a suit properly commenced by information? Who is the informant, and by whom, in case the information is dismissed with costs, are the costs to be borne?

Q.—What are the objects with a view to which written pleadings are required by the Court of Chancery?

Q.—Mention the principal points in which the procedure of the Court of Chancery differs from that of a court of Common Law; and point out branches of the jurisdiction exercised by the Court of Chancery which are attributable to this difference in procedure?



*Of the Parties to Suits.*

Q.—State the general rule which has prevailed in the Court of Chancery respecting the proper parties to a suit. In what respects has the rule been affected by the statute for amending the practice and course of proceeding of the court?

Q.—Explain the reason and meaning of the rule, that a mere witness or agent cannot be made a party to a bill in equity. Is it liable to any and what exceptions?

Q.—A testator directs that the residue of his personal property shall be divided equally between A. and B. A. files a bill against the executor for an account, and payment of A.'s moiety. Is B. a necessary party to the suit? Is he a proper party?

Q.—Explain the doctrine of representation with respect to parties. What persons are by themselves incapable of instituting proceedings in Chancery; and by whom, as regards each class, should proceedings be instituted?

Q.—When can a husband be joined as a co-plaintiff with his wife in a suit?

Q.—Can a bill be sustained against a person who is not interested in the subject-matter of a suit, in any, and what instances?

Q.—In what manner must a suit be instituted by a married woman, who claims, as her separate property, a fund which is in possession of her husband and claimed by him as his own. Can the evidence of the wife or husband be received in such a suit?

Q.—In what manner do bodies corporate, infants, married women, and lunatics defend a suit respectively?

Q.—Who are the proper parties defendant to a bill for discovery in aid of the defence to an action at law?

Q.—In what cases does a suit abate; and in what manner is an abatement remedied?

*Bills.*

Q.—Distinguish accurately between a bill for relief

and a bill for discovery. Of which nature is a bill which prays for an injunction against proceedings at law until a defendant has put in his answer?

Q.—What is the nature of a bill in Chancery according to the present system, and of what parts does it consist?

Q.—What are the different kinds of bills not praying relief, and in what cases do they lie respectively?

Q.—What alteration has been made by the statute 15 and 16 Vic., c. 86, in the practice of the Court of Chancery, with respect to the relief granted on bills of foreclosure?

Q.—In what manner is a defendant informed that he is required to answer the bill?

### *Pleas.*

Q.—When can the case of a defendant be properly stated by way of plea?

Q.—Mention the advantages and disadvantages of defending by plea and answer respectively?

Q.—Distinguish between the averments and answers in support of a plea. What are the objects which they respectively fulfil?

Q.—To a bill of discovery in aid of an action at law, can a plea of a fact, which would form a good defence to the action, be maintained? State the grounds upon which your opinion is founded?

Q.—Is a defendant at liberty, in the Court of Chancery, to file two pleas to the whole bill, or to the one part of the bill? Explain the reason of the rule on this subject.

Q.—What is the object of putting in a plea to the whole bill, and what is the defence proper for a plea?

Q.—How should a defendant proceed to take advantage of the Statute of Limitations?

Q.—A bill is filed for the purpose of setting aside, on the ground of fraud, an agreement made in France for the sale of an estate situate in that country. Is a

plea to the jurisdiction sustainable, the defendant being in England?

Q.—A plaintiff states a title dependent on his being the heir of A. B., and alleges that the defendant in conversation admitted the fact of such heirship. The defendant puts in a plea simply denying that the plaintiff is heir of A. B. Is the plea sufficient?

Q.—A files a bill against C., stating that B. was indebted to A. in the sum of £100, and that B. died, having by his will appointed C. his executor, and praying an account of B.'s assets received by C., and payment of the debts thereout. C. files a plea stating that he is not the executor of B., and that B., at his decease, was not indebted to A. in the sum of £100, or any other sum. A. sets down the plea for argument. Will it be allowed?

Q.—What facts, stated in a bill, are put in issue if a plea is filed? In what manner must a plaintiff proceed who wishes to dispute the truth of a plea, and its validity in law?

Q.—In what cases should a plea be supported by an answer? State the reason of the rule, and illustrate it by an example.

### *Demurrer.*

Q.—Can a demurrer be good in part and bad in part. Explain the meaning of the rule on this subject. Is the rule equally applicable to pleas?

Q.—A bill states certain facts and asserts a conclusion of law which the facts do not warrant; but which, if established, would entitle the plaintiff to relief, and without which the plaintiff's case entirely fails. Is a plea or demurrer the proper form of defence?

Q.—Is a demurrer, which is good to the relief prayed by the bill, good to the discovery also? State the reason of the rule upon this subject.

356+ Q.—What is meant by multifariousness in a bill? What is a bill of peace? How far will the objection of multifariousness apply to a bill of peace?

*Answer.*

Q.—What is the office of an answer to a bill in equity? In what cases should an answer be put in according to the present practice of the court?

Q.—Explain the rule that a defendant who answers at all must answer fully; and state the reason for which it has been adopted. Is it open to any and what exceptions according to the present practice of the court?

Q.—Must an answer, in support of a plea, be sufficient in the ordinary acceptance of the word?

Q.—What are the consequences (supposing the plaintiff not to file interrogatories) of abstaining from putting in an answer to the bill?

Q.—Explain the mode in which a defendant to a bill in Chancery is compelled to answer the interrogatories filed for his examination by the plaintiff?

Q.—With what view is a plaintiff empowered to enforce an answer to interrogatories from a defendant? No interrogatories having been filed by the plaintiff, is it ever and when expedient for the defendant that he should file an answer to the bill?

Q.—Can a suit in Chancery proceed in the absence of any pleading on the part of the defendant? Is it in any, and what cases essential to the interests of the defendant that he should file some pleading?

Q.—Explain the term “Traversing Note.” Is it in any, and what case proper to file a traversing note under the present system of procedure?

Q.—A sufficient answer to a bill having been filed, what are the courses which are open to the plaintiff? Mention the advantages and disadvantages attendant upon each?

Q.—State the various proceedings to be adopted by each party after a plea to the whole bill has been filed?

Q.—By what expedient is the use of special replications rendered unnecessary in Chancery?

Q.—In what manner is issue joined in a suit by bill in equity?

Q.—No interrogatories for the examination of the defendants having been filed, one defendant alleges a single fact by way of plea, another defendant puts in an answer merely alleging the same fact. The plaintiff is doubtful whether the fact alleged is true, and whether, if true, it constitutes a good defence to the bill. He cannot gain any advantage in amending the bill. How should he proceed?

*The Hearing and Evidence.*

Q.—Explain the mode of taking the evidence of witnesses in the Court of Chancery, and point out the disadvantages of the former system.

Q.—In what cases is evidence taken before a jury?

Q.—To a bill containing several statements, one defendant files a plea, denying one of the statements; another defendant puts in an answer, simply denying the same statements. What are the issues of fact, and of law tendered by the plea, and what by the answer?

Q.—A person files a bill against two executors, alleging that he is a creditor of their testator. To this bill the one puts in a plea denying the debt; the other an answer containing the same denial. The plaintiff replies both to the pleas and the answer. What fact must he be prepared to establish as against each defendant?

Q.—State for what purposes, and under what restrictions, and by and against whom, the answer of a defendant can be used at the hearing of a cause.

Q.—A plaintiff does not file interrogatories for the examination of the defendant, and the defendant does not put in an answer. Are there any, and what facts, which it is incumbent on the plaintiff to establish by evidence?

Q.—Explain these proceedings: “a motion for a decree,” and “setting down a cause on bill and answer.”

Q.—A plea being filed to the whole bill, what facts are considered as admitted on the argument of the plea? What question is decided by the court on the

argument, and supposing the decision to be against the plaintiff, what question may he still raise with reference to the validity of the plea?

Q.—Explain the mode of proceeding at the hearing of a suit in Chancery, when an answer has been filed and evidence taken.

Q.—How should a party to a suit proceed who desires that the evidence may be taken *vivâ voce* at the hearing?

### *The Decree.*

Q.—A bill is filed by A. to set aside a sale by his trustee to B., on the ground that it constituted a breach of trust. B. files a plea, alleging simply that he is a purchaser for valuable consideration. A. replies to the plea, which is proved to be true. What will be the result of the suit?

Q.—An agreement relating to personal property is entered into, reduced into writing, and signed by the parties. By mistake, a material term of the agreement has been omitted. A bill is filed by one party to enforce the agreement really entered into, and another bill is filed by the other party to enforce the written agreement. What decree will be made in each case?

Q.—A. mortgages an estate to B. and subsequently to C. B. files a bill for foreclosure; what is the proper form of decree?

Q.—What is the effect of setting down a cause for hearing, and proceeding to hearing without joining issue?

Q.—In what manner can a decree be reversed or altered? first, when it has been enrolled; secondly, when it has not been enrolled.

### *Proceedings after Decree.*

Q.—A suit having been instituted, praying it may be declared that the defendant is trustee for the plaintiff and his heirs, of an estate vested in the

defendant for a legal estate of fee simple, the plaintiff dies after witnesses have been examined, but before decree. In what manner can a devisee under the plaintiff's will of the estate in question obtain the benefit of the former proceedings.

Q.—What facts according to the former practice could be introduced into a bill, by way of amendment; and when was a supplemental bill necessary, in order to bring additional facts before the court? Is it in any case necessary to file a supplemental bill according to the present practice?

Q.—What is the office of a bill of review, and of a bill in the nature of a bill of review? What restriction is imposed by the practice of the court upon filing such bills, and what is the object of the restriction?

Q.—What is meant by the abatement of a suit. By what events is it occasioned, and how is it remedied? Can an abatement be partial?

Q.—In what manner can a plaintiff bring before the court facts which have occurred subsequently to the time of filing the bill, and how can a defendant bring before the court facts which have occurred subsequently to the time of putting in his answer?

Q.—After a decree for foreclosure absolute has been enrolled, will the Court of Chancery in any case or on any grounds enlarge the time for redemption?

Q.—What is meant by enrolling a decree in Chancery? In what mode, and on what grounds can a decree which has been enrolled be reversed or altered?

Q.—A suit is commenced by a feme sole plaintiff against a feme sole defendant. First, the plaintiff and then the defendant marries; afterwards, the husband of the plaintiff dies. Explain the effect produced upon the suit by each of these events, and the steps which should be taken in consequence on behalf of the plaintiff.

Q.—Plaintiff and defendant die before decree. Can any, and what step be taken in the cause; firstly, by

the representatives of the plaintiff; secondly, by the representatives of the defendant?

Q.—A party to a suit in which a decree has been made, is advised that the judge has proceeded on an erroneous view of the law, and, since the decree was pronounced the same party has discovered evidence material to an issue in the cause, which, if brought forward at the hearing might have affected the decree, but which, although he exercised due diligence, he could not adduce at that time. Is there any mode by which the benefit of the new evidence can be obtained, and what course should the party who desires to use the new evidence pursue, in order to have the supposed error of law corrected, and the new evidence taken into consideration?

### *Motions.*

Q.—Explain the mode in which an injunction against proceedings at law was obtained previously to the 15 and 16 Vic., c. 86, and state the alteration in the practice occasioned by the Act, with the reason on which the alteration was grounded.

### *Incidental Proceedings.*

Q.—For what purpose can a summons be employed in the Court of Chancery? State the general nature of the proceedings which can be founded on a summons.

Q.—Distinguish between a bill and a petition in equity; and state generally what are the proper objects of each.

### *Proceedings without Bill.*

392 Q.—Explain the proceeding by claim. For what purpose is it adapted?



# INTERNATIONAL LAW.



## OUTLINE OF INTERNATIONAL LAW

*International Law* treats of the rights of nations and individuals arising from the conduct of states to each other; and of the rights of individuals as affected by the municipal laws of different nations. The former division is called Public International Law; the latter, Private International Law, or the Conflict of Laws.

### *Public International Law.*

Most of the rules of Public International Law have been derived from the Roman law, the doctrine of expediency, the influence of public opinion, and the good, old rule that "might is right." Nations although nominally equal, being in reality unequal both in power and material resources, have different interests. What might answer the purpose of a powerful nation might not be equally advantageous for a weak nation. For these reasons we find many of the rules of Public International Law are exceedingly contradictory. Indeed, on some questions of Public International Law there are no rules, and in those cases the principles which should prevail, must be determined by each particular nation. Thus the question whether a mail steamer, like the *Trent*, is liable to be taken into a prize court for adjudication has never been judicially determined. If the principle of public convenience in the rapid transmission of mails is to decide the question, the *Trent* was properly allowed to pursue her voyage after the seizure of the Southern Commissioners. Whether the emissaries of a rebel government before their arrival at the country to which they are accredited,

can, to evade capture, transfer themselves, and their despatches from a vessel of the rebel government to a vessel of the neutral nation, so as not to be liable to be stopped on their passage by the cruisers of the national government is another question, which remains to be judicially decided. If the interest of all neutral nations to maintain their neutrality is to decide the question, then such emissaries are liable to be stopped. Unfortunately, many of the questions of Public International Law run counter to national pride or national interest. On these occasions, we need not be surprised that passion usurps the place of argument, and might of right. Numerous instances of the truth of this observation will occur to every one acquainted with the history of Public International Law. The facility of communication between different countries, the influence of the press, and the extension of education, all lead however to the hope that national pride or national interest will not for the future be the principle on which many questions of International Law are decided. Let the uniform rule of Public International Law be *justice between nation and nation*, and then we have a principle which will solve all doubts, and remove all difficulties. But let one act of national injustice, such as the partition of Poland, be overlooked by the other nations, and it will be a thorn in their side until justice be done.

The requisites of a nation is one of the first questions discussed by Public International Law, and these are said to be a government, a code of laws, a national treasury, the consent and agreement of the citizens, and the observance of treaties of peace and alliance. Grotius, 2. 3. c. 3, sec. 1. The definition implies that the state is *sovereign*, or independent of the control of every other state. There may be however, states that are *not* sovereign, and in that case they are *not recognised* as nations by the sovereign states. Thus the claim of the states styling themselves "The Confederate States of America" to be recognised as a nation is preposterous, so long as

portions of the territory claimed by them are occupied by the authorities of the United States. Most of the questions of Public International Law occur in time of war, but there are many which arise during a state of peace. While a state of peace exists between any particular nations, their rights are usually defined by treaty. Where no treaty exists or it has expired, the principal questions of discussion relate to the right to trade, the navigation of rivers or inland waters, the boundaries of states, the right of fishing, the jurisdiction over adjoining seas, and the right of a nation possessing only the upper parts of a navigable river to descend to the sea. On these subjects the practice of nations is not uniform. That every nation is bound to grant a passage for lawful purposes, through a country to the people of other states; that the surrender of fugitive criminals is not justifiable, unless it be in pursuance of a treaty obligation by the state, where the criminal is apprehended; that ambassadors are subject to the laws of the country only by which they are sent; and that consuls are responsible to the civil and criminal laws of the country in which they reside, are however uniform rules with nearly all nations.

During a state of war between any particular nations, all other nations not engaged in the contest as allies, or principals, are called *neutrals*. A state of war may exist between a nation and any part of its dominions, or between two independent nations. The former is usually termed a civil war. Where the civil war "involves a contest for the sovereignty, other states may remain indifferent spectators of the controversy, still continuing to treat the ancient government as sovereign, and the government *de facto* as a society, entitled to the rights of war against its enemy; or may espouse the cause of the party which they believe to have justice on its side. In the first case, the foreign state fulfils all its obligations under the law of nations; and neither party has any right to complain so long as it maintains an impartial neutrality." Wheaton's Elements of International Law, 6th edition, p. 32.

As however, assistance is generally granted conformably to the law of nations in cases of revolt, where rulers have violated the social compact, there seems no reason why assistance should not be uniformly granted to rulers where subjects revolt without having justice on their side. Were this principle to prevail among nations, we would not again behold a civil war, like that between the United States and the Confederate States, originating from sheer disappointment at the result of the election of the head of the government.

Where a war breaks out between two sovereign nations, a formal declaration of war is sometimes made. In other cases, the recall of the ambassador is considered tantamount to a declaration of war, or at least, to a cessation of friendly relations. Private debts are rarely, if ever, confiscated on an outbreak of war, but their recovery at law is suspended until the return of peace. In modern times public debts are never confiscated.

No trade can take place between the subjects of two countries at war, except by special licence. All contracts made during the war are absolutely void. The only exception to this strict and rigorous rule of international jurisprudence is the case of ransom bills, where not prohibited by local law, and bills drawn by prisoners of war for their own subsistence. Not only the subjects of the countries at war, but also foreigners may acquire a hostile character by the following circumstances :

Possessions in the territory of the enemy.

Residence there for the purposes of trade.

A permanent residence there for any other purpose.

Continuance of, or entrance into a commercial partnership there during the war.

Trading in those branches of commerce confined in time of peace, to the subjects of the enemy.

Sailing under the flag and pass of the enemy.

These circumstances in general only give rise to the hostile character, when property is captured at sea, for with property or private individuals on land belligerents rarely interfere. These circumstances will

become of even less moment, since the abolition of privateering at the Congress of Paris, in April, 1856, by Great Britain, Austria, France, Russia, Prussia, Sardinia, and Turkey. Thirty-six other powers have also signified their intention to discontinue privateering. A vessel captured at sea by a belligerent, is called a *prize*, and must be brought by the captor with due care, into some convenient port, for adjudication by a competent court. "Where the captor is a man-of-war, bound on the public service, such a vessel cannot depart from her instructions, but must proceed upon her original destination; (Sir W. Scott, *The Anna*, 5 Robinson, 385) and in that case the vessel, if belonging to the enemy may, it is said, be destroyed. If impossible to bring in, the next duty of the captor is to destroy enemy's property. Where doubtful whether enemy's property, and impossible to bring in no such obligation arises, and the safe and proper course is to dismiss. Where it is neutral, the act of destruction cannot be justified to the neutral owner, by the gravest importance of such an act to the public service of the captor's own state; to the neutral it can only be justified under any such circumstances by a full restitution in value. These are rules so clear in principle and established in practice, that they require neither reasoning nor precedent to support them." Sir W. Scott, *The Felicity*, 2 Dodson, 386.

At the Congress of Paris already mentioned, the liability of property at sea to capture, was greatly lessened by the two following declarations:

The neutral flag covers enemy's goods with the exception of contraband of war.

Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag.

These two declarations were made by Great Britain, Austria, France, Russia, Prussia, Sardinia, and Turkey, and have since been adopted by thirty-six other powers.

During the progress of the war between the belligerents *neutral* nations must be *impartial*. On the other hand, neutral territory is inviolable by the

belligerents. Accordingly, as states are considered to have jurisdiction within a distance of three miles from the sea-shore, no capture can be made within that distance. The principal restrictions on vessels of a neutral nation are against carrying contraband of war, and enemy's despatches, and against contravention of the law of blockade.

Where a vessel is bound between two neutral ports no question of *contraband of war* can arise as to goods of any kind. Even when goods are in a vessel bound to an enemy's port the character of that port is always taken into consideration, as well as whether the articles are going with a highly probable destination for military or naval purposes. There is much diversity in the rules of nations on the subject of contraband of war. Arms and munitions of war, naval stores, and materials for ship-building are uniformly regarded as contraband of war. By the municipal laws of some nations the exportation of arms to a belligerent is prohibited.

On the subject of carrying *enemy's despatches* in neutral vessels the rules appear to be:—

Enemy's despatches cannot lawfully be conveyed between different ports of the enemy's country.

Enemy's despatches cannot lawfully be conveyed between the enemy's colonies, and the mother country.

Enemy's despatches may lawfully be conveyed from a neutral country to an enemy's country.

Enemy's despatches may lawfully be conveyed from an enemy's country to a neutral country, unless they have an *ultimate hostile destination* as to a colony of the enemy.

Where despatches are conveyed between two *neutral* ports, but have an *ultimate hostile destination*, there is, in the absence of evidence to the contrary, a presumption of innocence on the part of the master of the vessel. Where the despatches are conveyed between two *neutral* ports *without* any ultimate hostile destination they may *è fortiori* be lawfully conveyed.

The interdiction of the conveyance in neutral vessels



of military or naval officers of the enemy appears to be regulated on similar principles to despatches; but, with this exception, that such officers cannot lawfully be conveyed in a neutral vessel to an enemy's country.

"A *blockade* is a sort of circumvallation round a place by which all foreign connexion and correspondence is, as far as human power can effect, to be entirely cut off." Sir W. Scott, in the case of the *Vrow Judith*. The four legal requisites of a blockade are: "The fact of the actual blockade must be established by clear and unequivocal evidence; the neutral must have had due previous notice of its existence; the squadron allotted for the purposes of its execution must be competent to cut off all communication with the interdicted place or port; and the neutral must have been guilty of some act of violation either by going in or attempting to enter, or by going out with a cargo laden after the commencement of the blockade."—Kent's Commentaries on American Law, 10th edn., p. 151.

When a blockade is established at any port, a formal notification of the blockade is usually given by the blockading power to all other countries. After such a formal notification has been given, the mere act of sailing with a contingent destination to enter the blockaded port, if the blockade shall be found to be raised, will constitute the offence of contravention.

Where a blockade is established without any formal notification, or *de facto*, any vessel sailing for the blockaded port must be warned off by the blockading squadron before being liable to condemnation.

Most places being blockaded by *sea* only, a neutral may carry on commerce with them by inland communication, and by the extension of railways throughout the world great facilities are now afforded for doing so.

The penalty for a violation of blockade is usually the condemnation of both cargo and vessel; but in some cases only one of them, should the owners of it be deemed in the judgment of the Prize Court the only guilty parties.

By the treaties of some nations, notice is required

to be given by the blockading power before establishing a blockade.

During the continuance of the war, each belligerent has the right of search of every private vessel of a neutral nation. This right is founded in necessity in order that the belligerent may ascertain whether the vessel be really neutral. This right cannot be exercised on the vessels of war of a neutral nation. Warm differences have several times arisen between nations on the question whether vessels under convoy are liable to be searched; but the position assumed by Great Britain is, that, unless in pursuance of a treaty obligation, the right may be exercised. On this subject, in the case of the *Maria*, Rob. Rep. 1, 340-378, Sir William Scott said, "Two sovereigns may, unquestionably, agree, if they think fit, as in some late instances they have agreed, by special covenant, that the presence of one of their armed ships along with their merchant vessels shall be mutually understood to imply, that nothing is to be found in that convoy of merchant ships inconsistent with amity or neutrality; and if they consent to accept this pledge, no third party has a right to quarrel with it any more than with any other pledge which they may agree mutually to accept."

The right of search in time of *peace* does not exist unless in pursuance of a treaty obligation. In all the treaties for the suppression of the slave-trade, the right of search is mutually conceded, and the trade itself is made *piracy* when carried on by the subjects of the respective nations. A treaty to that effect has lately been concluded between Great Britain and the United States, and the flag of the latter power like that of the former will, in the words of Sir James Mackintosh, "rise to loftier honour by bending to the cause of justice and humanity."

When a treaty of peace is made between the contending nations, allies are always parties to the treaty.

*Private International Law.*

The subjects of Private International Law are mostly persons, contracts and procedure. In regard to *persons* Private International Law defines their nationality, domicile, and legal competency.

*Nationality* is the duty of allegiance to a particular state. Nationality may be acquired in various ways, but is mostly a legal incident of birth. Thus every one born in the British dominions is a British subject, unless a child of a foreign ambassador, or of parents subjects of a state at the time of birth at war with this country. Persons born out of the British dominions also acquire a British nationality if their fathers or grandfathers by the father's side were natural-born subjects, unless such ancestors at the time of the birth of such children were attainted of treason, or were liable to the penalties of treason or felony, in case of returning to the United Kingdom without licence, or were in the actual service of a prince at enmity with the Crown of this realm. Marriage by a woman since the 7 and 8 Vic., c. 66, to a natural-born subject or person naturalized also confers nationality. By the 7 and 8 Vic., c. 66, every person born out of her Majesty's dominions, of a mother being a natural-born subject of the United Kingdom, is made capable of acquiring any estate, real or personal. The statute, however, does not appear to confer nationality upon the person so entitled.

British nationality cannot be divested by any act of a subject. Thus, if an emigrant from England to the United States were to become a citizen of the latter country, that circumstance would in no degree lessen the duty of allegiance to the former country.

*Domicile* is a voluntary residence at a particular place with the intention of making it the permanent abode of the resident. Domicile is mostly a question of fact to be determined from the circumstances attending residence in a particular country.

Domicile is of three kinds: Of origin; by operation

of law; and of choice. Domicile of *origin* is acquired by a person at the time of birth. If the father was alive at the time of birth the domicile of the child is that of the father, or if dead that of the mother, or if both parents are unknown the domicile is the place where the child was found. Domicile by *operation* of law is one which arises from the provision of the law. Thus a woman acquires by marriage the domicile of her husband; ambassadors and consuls, when not already resident in the country in which they act, retain the domicile of the country whose interests they represent; and the domicile of a child, until of age or married, is that of the father; in case of his death, of the mother; or, in case of the death of both parents, of the guardian. Domicile of *choice* arises from the intention of any adult not being a married woman. This intention is either express or implied from circumstances. As a general rule, the place where a person resides is his domicile in the absence of evidence to the contrary; but if he were only on a visit to the place his domicile would remain unaltered. Where a person is married his domicile is usually where his family reside. Where a person has two residences, the one which may be regarded as the head-quarters of his affairs is considered his domicile. Thus the domicile of a landowner is his country seat, and that of a merchant his town residence. Previously to the 24 and 25 Vic., c. 114, a will of personalty must have been executed according to the law of the country where the testator was domiciled at the time of his death, and this is still the rule with regard to persons not British subjects. By that act, however, a will of any British subject dying after the passing of the act (6th August, 1861) is valid in the United Kingdom if made according to the requirements of the act. By the 24 and 25 Vic., c. 121, where a mutual convention is made between Great Britain and any foreign state, a subject of either is not to be considered domiciled in the country of the other until he has been resident in such country for one year immediately before his death,

and such person has deposited in a public office of such country, a declaration in writing of his intention to become domiciled in such country. The *legal competency* of a person is usually denominated his *status*. In some countries a person is not deemed of age until 25, while in others majority is attained at 21. Where transactions are complete abroad, and in some respects as to marriage, foreign status is recognised in this country, but on no other occasions.

In regard to *property*, International Law treats of the law by which it is regulated. The property is either immoveable or moveable. *Immoveable* property is regulated exclusively by the law of the country where it is situate, although the law of another country may reach it indirectly through a personal remedy against the owner. *Moveable* property is regulated by the law of the place of the domicile of the owner, but on what principle jurists do not agree. Where a person domiciled in England desires to will real and personal property, situate elsewhere, he should make two wills. The one relating to the real property must be in the form required by the law of the country where the land is situate. The other will relating to the personalty should be made according to English law. If, however, the land is in Scotland care must be taken to use, in the clause in which the land is conveyed, the words *give, grant, and dispose*, in place of *legate or bequeath*. The document so disposing of land in Scotland is also liable to a deed stamp duty of £1 15s.; the rule of the Scotch law being, that landed property can only be conveyed by a *disposition* or deed.

In regard to *contracts*, the two principal rules are : 1. The validity of the contract is to be determined by the law of the place where the contract was made ; and 2. The remedy for a breach of contract is regulated by the *lex fori*, or law of the country where the action is brought.

In this country *marriage* is regarded as a contract, and if valid according to the law of the place where made is considered valid here. But where the marriage

is between British subjects the marriage to be valid must *not* have been within the prohibited degrees.

*Procedure* is regulated by the law of the country where the suit is instituted.

## BOOKS OF REFERENCE ON INTERNATIONAL LAW.

Bentham's Principles of International Law.

Foelix Droit International Privé.

Grotius de Jure Pacis et Belli.

Hazlitt and Roche's Manual of Maritime Law.

Kent's Commentaries on American Law. The chapters  
on International Law.

+ Story's Conflict of Laws.

+ Wheaton's International Law.

+ Westlake's Private International Law.

## QUESTIONS ON PUBLIC INTERNATIONAL LAW.

### *Of States.*

Q.—What is the voluntary, what the conventional, and what the customary law of nations?

Q.—State briefly the chief differences between the constitutions of the Swiss Federal Union, of the United States of America, and of the Germanic Confederation?

Q.—What is the difference between a “Composite State,” and “a System of Confederated States.” Give examples of each kind.

Q.—Under what circumstances is a society of men political and independent? Define “Sovereignty.” Of what nature do you consider the Sovereignty of the United States of America, and that of the half Sovereign States of the Romano-German Empire?

Q.—In what sense does Bentham assert that the *afflictive* power of the sovereign is the limit of his rightful dominion? What theory of the nature of law is assumed in this proposition?

Q.—Define Eminent Domain. What sort of property in the National Territory are Sovereign States deemed by each other to enjoy?

Q.—What is the character of the enquiry pursued in the treatise: *De Jure Belli et Pacis*? By what canons does the author propose to guide himself?

Q.—On what is founded the title of Great Britain to sovereignty over Australia, Jersey, Canada, Ceylon, and the Mauritius?

Q.—What objections are there to the definition of a



*sovereign* government given by Von Martens—"a *sovereign government* is a government, which ought not to receive commands from any external or foreign government?"

Q.—When does a revolted state ascend from the condition of an insurgent province to that of an independent community?

Q.—Define a supreme federal government. Give an example of such government, and the reason for such classification.

Q.—Explain the epithet unconstitutional, as contradistinguished to the epithet illegal, as applied to the conduct of a monarch, or to the conduct of a sovereign member in its collegiate and sovereign capacity.

### *Of the Rights of Nations in time of Peace.*

Q.—State the immunities to which a public minister at a Foreign Court is entitled under general International Law.

Q.—What is meant by the *alternat* in diplomatic intercourse?

Q.—What is the general rule of International Law as to the extent of a nation's jurisdiction over adjoining seas? What privileges in excess of those conferred by the General International Law is Great Britain allowed to have obtained by prescription?

Q.—What do you conceive to be the rule of general International Law, as to the right of a nation possessing the upper water of a navigable river, to have unrestricted passage to its mouth. Illustrate your answer, by reference to the Rhine, and the St. Lawrence.

Q.—What is the existing state of public law as to the navigation of the river Mississippi? What principles of International Law apply to the question?

Q.—What is the extent of the international right of innocent passage on rivers? Illustrate your answer by examples.

Q.—To what extent does the doctrine that the sea and the sea-shore (*mare et per hoc litora maris*) survive in the public law of modern times?

Q.—What are the King's Chambers, and what sort of jurisdiction does Great Britain assert over them? What amount of jurisdiction does the Hovering Act assume?

Q.—What was the *Consolato del Mare*? Where is it supposed to have originated, and what have been its effects upon modern International Law?

Q.—In Confederated States, where does the power of alienating portions of the national territory reside?

Q.—Give an account of the attempt made by the Russian government in 1821, to constitute part of the North Pacific Ocean as a *mare clausum*. Of what principle of public law was the proposed arrangement subversive?

Q.—Apart from special usage, what are the limits of the jurisdiction exercised by independent nations, over the portion of the ocean in the vicinity of their territory.

### *Of the Rights of Belligerents.*

Q.—What are Droits of Admiralty; and what is the existing practice of the English government in regard to them?

Q.—Give a brief analysis of the course of reasoning in virtue of which enemy's goods came to be considered subjects of occupancy. In what is it inconsistent with the maturer theory of the *Jus Gentium*?

Q.—Under what circumstances was the *adprehensio* of the immoveable property of an enemy deemed to be completed in Roman law so as to divest the rights of the original owner? At what moment do the rights of the owner of a captured vessel pass to the captor according to the modern law of war?

Q.—Describe the origin and developement of the fiction of *Postliminium*. How far is *Postliminium*, and how many *Res Postliminii* are recognized in modern civil law? In what manner is the doctrine of neutralizing the operation of Postliminy known to have affected the acts of Congress of Vienna?

Q.—Define the Right of Search. Why is it an inevitable consequence of the theory of warfare? What rules has it been proposed to engraft on the law of war with the view of rendering the right unnecessary?

Q.—How far was the right of search trenched upon in the manifesto issued by Catherine the II. of Russia in 1780? By what states were the principles of the Russian declaration adopted; and to what extent does their assent bind them at the present time?

Q.—What is meant by the Right of Asylum in neutral ports? Is the right absolute or conditional?

Q.—To what extent is there a conflict of doctrine between the courts of England and the United States as to the right of a belligerent to confiscate debts owing to the subjects of the enemy? Which opinion do you consider to be most in accordance with the General International Law?

Q.—Describe the nature and legal results of a ransom bill. Does English law observe any peculiar rules on this subject?

Q.—Where a treaty contemplating an offensive alliance has been entered into, is the obligation to render assistance absolutely imperative when the *casus foederis* arises?

Q.—What effect has the commencement of hostilities on obligations subsisting—1. Between the belligerent states; 2. Between the one state and subjects of the other belligerent state; 3. Between the subjects of one belligerent and the subjects of the other.

Q.—What is the rule of the General International Law with respect to debts due to an enemy previously to the commencement of hostilities, and what has been the actual practice of nations in modern times on this point?

Q.—What are the courts which have jurisdiction to declare maritime captures lawful prize? If the adjudication be favourable to the captor, from what period does his title commence?

Q.—Under what circumstances will the capture of

an enemy effected beyond the territorial *finis domini* of a neutral be valid?

*Of the Rights and Duties of Neutrals.*

Q.—Give the history of the English Foreign Enlistment Act, and state the effect of its provisions. State the circumstances of the case of the *Alexandra*.

Q.—State the circumstances of the case of the *Maria*, and the principal points of the judgment of Lord Stowell.

Q.—To what extent does the maritime jurisdiction of a neutral prohibit belligerents from capture?

Q.—What were the principles of the armed neutrality of 1780?

Q.—To what extent can the subject of a belligerent power acquire the privileges of a neutral by residence abroad or otherwise?

Q.—A British subject purchases goods from an enemy in a hostile port, which is not blockaded, and ships them in a neutral bottom for carriage to England. Would an insurance on the cargo be valid under the General International Law? Would it be valid under the practice of the late war with Russia? Give reasons for your answer, and state whether you consider there is anything in her Majesty's declaration, issued at the commencement of hostilities, which would enable the vendor of the cargo to sue for the purchase-money in an English court of law.

Q.—Enumerate the acts of assistance afforded by a neutral ship to a belligerent which International Law condemns as illegal.

Q.—In what respect is the English Order of Council of 1795 considered by Mr. Wheaton to diverge from the current practice on the subject of contraband of war? What was the practice during the late war with Russia as respects the point in question?

Q.—According to the existing doctrine of International Law, what description of supplies may be considered contraband of war? Under what circum-

stances may contraband be carried without incurring the penalty of confiscation?

Q.—State briefly the conditions which must be satisfied in order that a blockade must be so completely established as to affect the rights of neutrals. If the blockading squadron be temporarily absent, will the blockade be necessarily suspended?

Q.—How far do you consider that foreign traders are entitled to the immunities of neutrals in a civil war between different sections of the same community?

12 Q.—Discuss the maxims “free ships, free goods;” “enemy’s ships, enemy’s goods.” To what extent have these maxims been adopted or modified by the principal nations of Europe and America?

Q.—What conditions are essential to constitute a violation of blockade?

### *Of Truces, Passports, and Treaties of Peace.*

Q.—What is the difference between a Treaty and a Transitory Convention?

Q.—What are the peculiar rules applied under International Law to the interpretation of conventions for the suspension of hostilities?

Q.—What is the effect of a treaty of peace on claims founded on debts contracted or injuries inflicted previously to the war?

Q.—When, on the conclusion of peace, things are stipulated to be restored to one of the late belligerents, in what state must they be restored?

Q.—What exceptions are there to the rule of International Law that the obligations of treaties are permanently extinguished by the breaking out of hostilities between the high contracting parties?

Q.—What exceptions are there to the rule that the power competent to bind a nation by treaty is also competent to alienate the public domain by treaty?

Q.—What is the rule of International Law as to trading with the enemy, and how far do you consider this rule to have been modified in the practice of the belligerents in the late war with Russia?

*Offences against the Law of Nations.*

Q.—What are the limits of the jurisdiction which commonwealths exercise over the public and private vessels of their subjects while on the high seas?

Q.—What limitations are there to the principle that the slave trade is piracy?

## QUESTIONS ON PRIVATE INTERNATIONAL LAW.

*Nature of Private International Law.*

Q.—What is a personal, and what is a real statute? State the principal tests given by the best jurists for distinguishing between them, and say which of the criteria you consider to be most satisfactory. In what consists the importance of the distinction between the classes of statutes?

*Bankruptcy and Insolvency.*

Q.—What do you believe to be the rule of General International Law as to the effect in foreign countries of—1. A certificate of discharge obtained by a bankrupt in the country of which he is a subject; 2. Of an order or decree vesting the property of such bankrupt in his syndics or assignees.

*Contracts.*

Q.—How far must the external form of a contract be regulated by the *lex loci contractûs*?

Q.—When an action is brought on a contract in a country which is not the *locus contractûs*, and a set-off which is admissible by the *lex loci contractûs* has arisen in the country where proceedings are instituted, can the set-off be enforced?

Q.—In considering whether the remedy on a contract is barred by a statute of limitation, is the prescription established by the *lex fori*, or that established by the *lex loci contractus* to be regarded?

Q.—Define a real contract, and state whether there is any class of innominate contracts which satisfies the definition?

Q.—In protesting a dishonoured bill of exchange which has been drawn under our jurisdiction, and has been made payable under another, and in giving notice of dishonour to the persons liable, ought the protest and notice to be according to the forms of the place in which the bill is drawn, or according to the forms of the place in which it is made payable? Give reasons for your answer.

Q.—When a contract is made in our country respecting immoveable property, situate in another, ought the forms of the contract to follow the *lex loci contractus* or the *lex loci rei sitae*? Is the doctrine of M. Foelix, on this point sustainable?

Q.—Do you consider there is any fixed rule of private International Law respecting the mode of proving foreign contracts? If so, what is it? Is there any difference in the mode of proving foreign Wills of Personalty? On what ground is the difference, if it exists, to be explained?

Q.—Distinguish between the parts of a contractual obligation which in the case of a foreign contract are respectively regulated by the *lex fori*, the *lex domicilii*, and by the *lex loci contractus*.

Q.—In dealing with foreign contracts, what difference does private International Law establish between the form of the contract, and the extrinsic evidence by which the contract is proved?

### *Domicile.*

Q.—Enumerate the circumstances which in the view adopted by English tribunals constitute a given person the subject of a given state. How far is the English

doctrine identical with that generally received by the comity of nations, and how far is it consistent with the principles which are propounded by Bentham as grounds of the relations between Sovereign and subject?

Q.—What is *primâ facie* the legal position in regard to domicile: 1. Of a widow; 2. Of a minor; 3. Of a married man whose residence and place of business are separate; 4. Of a person *in itinere*; 5. Of an ambassador; 6. Of a bastard.

Q.—What is the meaning and scope of the maxim: “Natural domicile reverts easily.”

### *Foreign Laws.*

Q.—What is the usual mode of authenticating foreign laws? If the construction of a foreign statute has to be determined, is it a question of law or of fact?

Q.—Define in general terms the character of the laws which, by the comity of nations, are allowed to operate extra-territorially.

Q.—As a general rule, what force is allowed under the comity of nations to the *Exceptio Rei Judicatæ* when founded on a foreign judgment *in rem*?

Q.—When a valid sentence of conviction or acquittal has been pronounced, what indirect effects may it have in states other than that in which the trial took place, and other than that to which the supposed offender owes allegiance?

Q.—State briefly the exceptions to the general rule, that laws of a Sovereign state, applicable to the civil condition and personal capacity of its citizens, operate upon them even when resident in a foreign country.

Q.—What are the limits imposed by International Law on the judicial power of a state over foreigners resident within its territory?

Q.—What is the rule of English law as to the jurisdiction of English courts in the disputes of foreigners? Does any other rule prevail elsewhere?

### *Marriage.*

Q.—Give a brief sketch of the state of the



authorities for and against the position that an illegitimate person, who by the subsequent marriage of his parents, becomes legitimated as heir by the law of his domicile, ought to be deemed such as to the inheritance of land in all countries.—Story's Conflict of Laws.

Q.—What is the rule of the French code in respect of marriages contracted by French subjects in foreign countries in conformity with the law of those countries, but not in accordance with French law? Does the rule in question agree or conflict with the general International Law.

Q.—To what extent have the English judges admitted the competence of the Scottish consistorial courts to dissolve marriages contracted in England? What is the doctrine on this subject which has the largest consensus of jurists in its favour?

Q.—What is the general rule of Private International Law as to the circumstances which are to determine matrimonial domicile?

Q.—When there is a marriage between parties in a foreign country, and an express contract respecting their rights and property, present and future, will the contract, by the comity of nations, be held binding everywhere? Will it be held to affect all kinds of property?

Q.—When persons are married in a foreign country, and there is no express contract as to their rights or property, what law determines their rights to property, real or personal, which belonged to them before the marriage? What to property which has accrued subsequently?

*Succession to Property according to International Law.*

Q.—What are the rules of Private International Law respecting the execution of the wills of personal property in foreign countries, and respecting the authority of foreign executors?

Q.—What rules govern the distribution of the property of an intestate who dies in a foreign country?

Q.—Under what circumstances do states recognise foreign rules of intestate succession?

Q.—What conclusions have been respectively arrived at by Cujacius, Huberus, and Bouillenois with reference to the operation of a will executed with the formalities demanded by the *lex domicilii* of the testator on immoveable property, situate in a country whose laws prescribe testamentary solemnities of a different description? State whether you consider the views of those jurists to be reconcileable, and compare them with the doctrines of the English law.

92 Q.—By what agency is the property of an intestate who dies abroad distributed?

## JURISPRUDENCE.



## OUTLINE OF JURISPRUDENCE.

By the late Mr. Austin (The Province of Jurisprudence Determined) the term *Jurisprudence* is confined to law as it *is*. Law as it *ought to be*, he defines as The Science of Legislation. But if "the science of jurisprudence (or simply and briefly, jurisprudence) is concerned with positive laws, or with laws strictly so called, considered *without regard to their goodness or badness*," according to the definition of that distinguished thinker, of what advantage is the science? Mr. Austin, however, admits in another part of his work, "that the sciences of jurisprudence and legislation are connected by numerous and indissoluble ties."

In a work (*Jurisprudence*, Murray), published last year, (1863), Mr. Phillips define jurisprudence as "the science which teaches us to analyse and classify the rules of justice;" and if so, jurisprudence is equivalent to law as it *ought to be*. The same author excludes the idea "that jurisprudence teaches us, or can possibly teach us what the rules of justice are." If there is any distinction between jurisprudence and legislation, it appears to be that the former determines the principles which *ought to be common* to all laws, while the latter is confined to the determination of the system of laws suited for each particular country. A complete system of jurisprudence appears to comprise :

1. The nature of Law.
2. The standard of Law.
3. The sources of Law.
4. The subject-matter of Law.
5. The object of Law.

The *nature* of law has given rise to numerous dis-

cussions. By many writers law is defined as a command from a superior to an inferior, but if this definition is to prevail the existence of International Law is ignored, nations being regarded as *equals*; or if not ignored, International Law must be defined according to Mr. Austin, as *International Morality*. Besides a large portion of law derives its force from *custom*, and not from any command of a superior. Mr. Austin, however, is of an opposite opinion. According to him, custom only becomes law "when it is adopted as such by the court of justice, and when the judicial decisions fashioned upon it are enforced by the power of the State." If however, this opinion is to prevail, "the conclusion," as Professor Foster justly remarks, (*Elements of Jurisprudence*) "is inevitable, that a defendant may be cast in damages in a court of law, only because he has not complied with requisitions which at the time they were made upon him, it was not legal to demand." The same author defines law as *that course of human conduct which is morally enforceable by public authority*. This definition does not however include the Divine Law, which is the command of a superior to an inferior being, and must be obeyed without hesitation. The term *Law* is however used in various senses. Every one feels that the meaning is quite different in the expressions: "*The laws of God*;" "*the laws of nature*," "and the *laws of the land*." Yet, the difference of meaning few can assign. *Law* in its most general sense is a *cause of uniformity of event*. If the uniformity be in natural phenomena, the cause of it is a law of nature, if it be in human conduct, the cause is a moral law, or a positive law. A moral or positive law may be further defined as a *rule enforced by a sanction*. The sanction is that which gives effect to the *rule*. The sanctions of *moral law* are the rewards and punishments of a future state, and "which God will award to every one according to his works." The sanction of *positive law* is the punishment or coercion by which it is enforced by the superior power in a state. The moral law therefore embraces

all human actions; positive law, only such as are enforceable by governments.

Here the question arises, what are the acts enforced by the Divine or moral sanction? and what are those enforceable by the positive sanction? The determination of the former belongs to the sciences of Theology and Ethics; that of the latter is the proper province of jurisprudence. Whatever is in accordance with the laws of morality is *right*, whatever is in accordance with the positive law is *just*, and the great question of the science of morals and jurisprudence is the determination of what is right; and what is just.

Although, as we have seen, the quality of the subject-matter of jurisprudence is, according to the opinion of Mr. Austin, no part of that science; still that author admits that, "As the nature of the index to the tacit commands of the Deity is an all-important object of the science of legislation, it is a fit and important object of the kindred science of jurisprudence." These tacit commands of the Deity are only employed when the Divine Law is silent. In Christian countries this Divine Law is called Revelation. The Christian dispensation does not, however, contain any system of rules out of which a body of law can be formed, and consequently these tacit commands of the Deity must be deduced from theories which are considered to be most in accordance with the revealed character of God. These theories or *standards* have generally been considered to be two: General Utility, and the Moral Sense. The former theory rests on the revealed and unrevealed principle that God designs the happiness of his creatures, and has for its object "the greatest happiness of the greatest number."—Bentham.

Mr. Austin adopts this theory, but he admits that *utility* is in some degree a matter of taste, and is also determined by the age in which men live. The *moral sense*, as is well stated by Professor Foster, "simply appoints conscience high arbitrator without either assuming that he is necessarily right or providing a rule for his guidance. Besides there are numerous acts which

are *right*, but which are not *rightly enforceable*. *Justice*, Mr. Austin regards as equivalent to general utility.

If these be according to the admissions of supporters, the defects of the existing theories which attempt to discover the tacit commands of the Deity, *the promotion of peace* may possibly be a theory which may be less liable to objection. "Peace on Earth" was and is one of the main objects of the Christian religion, and therefore *the promotion of peace* is a theory which may be applied to every law. Thus a law which punishes persons committing assaults is *good* because it tends to promote peace. So a law (like that which prevails in several parts of Europe) prohibiting a man from marrying unless he is in circumstances to maintain a wife is *good*, because its tendency is to promote peace among married people. On the other hand, a law (unhappily prevalent in England) which allows a woman divorced from her husband on the ground of adultery to marry the adulterer is *bad*, because its indirect tendency is to promote discord among married people.

Again, a law which allows of priorities among creditors merely because some of their securities had a seal affixed to them while others had none is *bad*, because it tends to promote discord. To extend the theory further, a body of law consisting mostly of custom and judicial decisions is *bad*, because it tends to promote disputes, but a code of *written* laws is good, because its tendency is to promote peace.

The *sources* of law are—

Customs,  
Statutes,  
Opinions of Jurisconsults,  
Judicial Decisions.

The *subject-matter* of law has given rise to much discussion. By several jurists it has been divided into the Law of Persons and the Law of Things. A better division is that of Mr. Udny (*Harmony of Laws*, 1858) into—

"Rights,  
Transfer of Rights,  
Prevention and Remedy of Wrongs."



*Rights* are divided into personal rights and property rights.

Under the head of *transfer* of rights may be included every mode of acquisition of rights, either by operation of law, by act of party, or by combination of both modes.

The prevention and remedies for *wrongs* are civil or criminal. The difference between civil and criminal wrongs is in the *remedy* and not in the offence.

The *object* of law is security of personal rights and property rights. To obtain this security there must be a government. Under this department of jurisprudence the nature of government, the distinctions in government, and the powers of government should be defined.

International Law, like Municipal Law, may be divided into "Rights, Transfer of Rights, and Prevention and Remedy of Wrongs."

In concluding this brief outline or rather abstract of the principles on which a complete system of jurisprudence may be formed, we are glad to observe that several eminent jurists, who have studied the nature of English law, are agreed that it is capable of scientific reduction. If in suggesting that the *promotion of peace* theory should be the standard of law, one step nearer that desirable object has been attained, one difficulty will have been removed. There is no man, however deficient in intelligence he may be, but must know whether any act done by him tends to promote peace or not. The untutored savage, who lies in wait to plunder the solitary traveller, shows, by lying in wait, that he knows the act he is about to commit is not one which will promote peace.

Possibly there may be objections to the *promotion of peace* theory, but at any rate, it is applicable to all countries whether Christian or not. The theory, when carried into practice, will, however, be found to be identical with the principles of Christianity, and thus having the concurrent testimony of revelation, and of human nature in its favour, a sure foundation will have been laid on which the superstructure of law may be built.

## BOOKS OF REFERENCE ON JURISPRUDENCE.

- ✧ Austin's Province of Jurisprudence Determined.  
Bentham's Principes de Legislation par Dumont (Taylor and Francis, 1858).
- ✧ Encyclopædia Metropolitana, Article on "Law."  
Lindley's Introduction to the Study of Jurisprudence (translated from Thibaut).
- Mackintosh's Law of Nature and Nations.
- ✧ Maine's Ancient Law.
- Montesquieu. Esprit des Lois.
- Whewell's Elements of Morality and Polity.

## QUESTIONS ON JURISPRUDENCE.

### *General Nature of Jurisprudence.*

Q.—Give the various definitions of Jurisprudence adopted by the principal legal writers. To what does Austin limit the province of Jurisprudence?

### *Laws.*

Q.—Mention some of the principal definitions or conceptions of Natural Law, which have obtained general currency. Have any of these exercised any appreciable influence upon legislation, or upon the interpretation of positive law?

Q.—Placing religious and economical considerations aside, what arguments suggest themselves to you and against the class of laws which impose penalties direct or indirect on the taking of excessive interest?

Q.—On what ground does Montesquieu deny the authenticity of the *établissements de St. Louis*? Do you consider them sufficient? On the assumption that the *Établissements* are authentic, in what respect is the theory of Montesquieu weakened?

Q.—Do you consider that the system of negative probation was indigenous among the tribes of Middle Germany, or that it is traceable to any provisions of the Roman law? Give reasons for your answer, and state whether negative proofs survive in any part of any contemporary Code.

Q.—In what relation does the juristical theory of Grotius stand to those of Puffendorf, Bodin, and Montesquieu?

Q.—Assuming that the ideas represented by the terms law, right, duty, and sanction are connected together, explain the nature of their connection : first, according to the theory of Grotius, or Whewell ; and secondly, according to the system of Bentham and Austin.

Q.—Give some instances of the reciprocal action of law on morals, and of morals on law. Does the existence of the reciprocal action lend support to either of the conflicting theories indicated in the preceding question ?

Q.—In what respect are laws properly distinguishable from laws falling under the following descriptions : International Laws, Laws of Honour, Laws of the Physical World, Moral Laws ?

Q.—With what meaning, and under what circumstances did the term “Equity” first make its appearance in the phraseology of Jurisprudence ? What are the objections to the popular English definition of Equity ?

Q.—Explain the fact that in the infancy of legal system, the law of Delict or Tort is of much greater practical importance than it is in the maturity of jurisprudence.

Q.—Explain the distinction drawn by most foreign jurists between the two departments of public law styled respectively *Jus Publicum Constitutivum* (*Staatsrecht, Droit Public Constitutif*) and *Jus Publicum Administrativum* (*Regierungsrecht, Droit Public Administratif*). What is the peculiarity of our institutions, which puts this distinction out of sight ?

Q.—Explain and illustrate the difference between the grammatical and logical interpretation of law.

Q.—Describe as briefly as possible the theory propounded by Montesquieu concerning the origin of civil procedure in Southern Europe. What views do you suppose they are that are indirectly combated in the 28th book of the *Esprit des Lois*. To which of the opposing theories has modern legislation lent support ?

Q.—What was the ancient and what is the modern meaning of an “Imperfect Law ?”

Q.—Whence arises the importance of analyzing the conceptions implied in political superiority and political inferiority?

Q.—What are the main arguments which have been advanced in favour of, and against the codification of the law?

Q.—Enumerate and describe the sanctions of Bentham. To which of these sanctions does Austin object, and on what grounds?

Q.—Define “Principles of Legislation.” Define and classify, with respect to each other, Jurisprudence, Ethics, Principles of Legislation, Positive Morality, and Positive Law?

Q.—In what position must the author of a rule stand to the persons on whom it is imposed in order that it may be a true law?

### *Persons.*

Q.—What rules concerning the distribution of profit and loss among sharers in a joint undertaking, does Grotius state to be deducible from the nature of the contract?

Q.—What was the nature of the mistake committed by Blackstone, in speaking of the rights “of persons, and the rights of things”?

Q.—What are the tests given by Mr. Austin for distinguishing *an independent political society*?

### *Rights and Duties.*

Q.—Give a brief summary of the arguments of Warnkönig (*Doctrina Juris Philosophica*) on the obligatory force of Nude Pacts. Is the view of such pacts taken by the Roman Law altogether at variance with the conclusions of M. Warnkönig?

Q.—Mention the opinions on the subject of synallagmatic agreements which Grotius combats, and the agreements by which he refutes them. In stating the positions of Grotius, distinguish those which depend on

his peculiar theory of obligation from those which do not.

Q.—Enumerate the essential ingredients of a contract, and state which of them is vitiated in each of the following cases:—1. When the contractor is deficient in intellectual capacity; 2. When he is under duress; 3. When the object of the contract is illegal.

Q.—What do modern civilians mean by the essentials, the naturals, and the accidentals of a legal transaction?

Q.—Where there are alternative legal duties, and the object of the right on which they depend is destroyed, what are the principles of general jurisprudence which apply?

Q.—What are the rules of general jurisprudence respecting the fulfilment of conditions?

Q.—To what principle does Grotius propose to resort for the purpose of solving questions as to the obligatory force of agreements entered into under mistake?

Q.—Explain the dictum of Thibaut's, that "the object of rights and duties is neither a person nor a thing, and can only be a transaction or event."

Q.—What is the difference of opinion between jurists as to the proper mode of calculating discount? Which mode is practically followed in commercial transactions in England?

Q.—In what particulars do servitudes differ from liabilities created by contract?

Q.—In Mr. Austin's Analysis of a Law, what is the place assigned to rights?

Q.—Define a *sanction* and a (legal) *duty*. What is the sanction of the Statute of Frauds? Has every duty a right corresponding to it?

### *Things.*

Q.—What distinct meanings do you conceive to be conveyed in the ordinary usage of the word possession? What are the significations of the term denominated by Savigny? Explain the meaning and scope of Savigny's dictum, "All property is founded on adverse possession ripened by prescription."

Q.—What considerations are urged by the jurists who have embarked in the controversy whether in the essential classification of jurisprudence, servitude should be ranked as dominion or with obligations. Which side is taken by Pothier, which by Triplong, which by Austin?

Q.—Distinguish between natural, civil, and simple possession. What was the anomaly in the expression of the Roman lawyers concerning possession to which Savigny addressed himself, and what is the explanation of it which he offered?

Q.—Define dominion. In what is the Roman conception of ownership distinguished from that of English real property law?

Q.—Describe the modes of acquiring dominion known as occupancy, specification, accession, and usucapion, and state what conditions must be satisfied in order that in each case dominion may be completely acquired.

Q.—What definitions does Thibaut give of outlays, appurtenances, civil produce, natural produce, and compensation.

Q.—State briefly the rules which Grotius has propounded for determining the obligations of a *bonâ fide* possessor in reference to mesne profits. What difference is there on the subject of mesne profits between the English and Roman law? What are the observations of Mr. Hallam on this conflict of the two systems?

Q.—What is the true distinction between the law of persons and the law of things? What is the relation of the law of actions to the other departments of the law?

Q.—In what manner does Roman law allow possession to be gained or lost?

Q.—What practical importance in Roman law belongs to the question in what class of rights servitudes should be placed?

Q.—*Occupatio rei nullius pro acquirendi domini causâ haberi potest singulorum tantum dominio in universum admissio.* Warnkönig, *Doctrina Juris Philosophica*. Give reasons in support of your opinion. How does it

affect the popular theory of the part played by occupancy in the occupation of individual property?

Q.—Define prescription considered as a term of general jurisprudence. Is any true prescription recognised by English law?

Q.—*Nemo sibi ipse causam possessionis mutare potest. On ne peut pas prescrire contre son titre en ce sens que l'on ne peut se changer à soi même la cause et le principe de sa possession* (Code Napoleon 24.) Explain carefully the import of these maxims. Under what circumstances could a derivate, dependent, or permissive possession become adverse in the sense of the Roman law?

Q.—Define occupancy. In what objects, in ancient and modern times, were the rights of dominium acquired by occupancy.

Q.—State and explain the aphorism of Savigny upon the origin of property.

5/ Q.—Illustrate from the Roman and Continental System of Law, that the law of personalty tends to annihilate the law of realty.



ROMAN AND CIVIL LAW.



## OUTLINE OF ROMAN LAW.

### *Of Law in General.*

*Law (Jus)* is the science of what is just and good. *Jurisprudence (Jurisprudentia)* is the acquaintance with divine and human affairs, and skill in what is just and unjust. Law is either public or private.

*Public* law regards the interests of the state, and *private* law, those of individuals.

Private law is divided into the *law of nature (jus naturae)* the *law of nations (jus gentium)* and the *civil law (jus civile)*.

The *law of nature* is the dictate of nature to man in common with all other animals.

The *law of nations (jus gentium)* is the law inculcated by natural reason on mankind, and common to all nations.

The *civil law* is that in force in any state, and was either *written* or *un-written*.

### I.

#### *Of Persons.*

*Person (persona)* in its strict sense is any being capable of having rights and performing duties.

The signification of the word has, however, been much extended, so that whatever is considered subject to laws is regarded as a person. Thus there are persons *physical* and *moral*, although the latter are more properly called *juridical* or *artificial*.

The word *persona* often signifies only capacity, as that any one is subject to certain laws, and capable of

certain duties. Thus, one individual may have in himself several capacities, the duties and rights of which are various.

*Of the capacity of persons in general.*

*Capacity (status)* is *natural* or *civil*. *Natural*, or *common* capacity, was that of every human being not a monster. An unborn child was regarded as if born in regard to every benefit appertaining to him.

For *civil* capacity there were several requisites: (1) *freedom*; (2) *citizenship*; (3) *membership in a family*.

Freemen were either *freeborn (ingenui)* or *freedmen (libertini)*.

Freemen were divided into *citizens and aliens (peregrini)*.

*Membership in a family* was the position of any one who was himself independent, but might possess other persons in his own power. Agnation with a particular family was also included in the expression *membership in a family*.

Whoever was not subject to the power of another (*in alterius potestate*) was independent (*sui juris*) although sometimes called *pater familias*. Whoever was subject to the power of another was *alieni juris*, as a child or a slave. The power of an independent person was threefold. 1, The power of masters over their slaves, and the paternal power over children and grandchildren; 2, *Manus*, or the power of a husband over a wife. (The ancient modes of marriage were "*confarreatio*," a religious ceremony in which none but those to whom the *jus sacrum* was open could take part; "*coemptio*," a fictitious sale, in which the wife was sold to the husband; and "*usus*," cohabitation with the intention of forming a marriage); 3, *Mancipium*, which was a fictitious sale in a formal manner, as in emancipation or adoption of any freeman.

The loss of capacity was called *capitis deminutio* and was either the *greatest (maxima)* which was the loss of liberty, and with it the other two capacities were necessarily extinguished; 2, the *middle*, the loss of

citizenship, and with it membership in a family, but not freedom, was extinguished; 3, the least, which included every change which befel a Roman citizen in his membership in a family, and not affecting his citizenship. *Existimatio* was the dignity belonging to any one in the full enjoyment of his capacity (*status*). It might be lost, as by the greatest, or middle *deminutio capitis* or impaired, but so that the person would not cease to be a Roman citizen. Persons whose *existimatio* was thus impaired were designated *infamous*, if their offence was of a grave character, *base*, if of a less grave character.

Persons may also be considered in other relations. In regard to sex, persons are either *male* or *female*. In regard to *age*, persons are either of age (*maiores*) or under age (*minores*).

At twenty-five a person became at age.

Puberty in males was considered to commence at fourteen. Females are regarded fit for marriage at twelve. Children until the age of seven, were called *infants* (*infantes*).

Persons in regard to their faculties, are either *sane* or *insane*.

Relationship between persons connected by ties of blood, is called *cognatio*.

This relationship is direct and either *ascending*, as from the descendant to the ancestors, or *descending* from the ancestors to the descendant.

Persons descending from a common ancestor are with regard to each other *collaterals*.

Nearness of cognation is counted by degrees. The degree is found according to the rule: *Whatever number of generations is required to determine the cognation between two particular individuals, in a similar degree, are those persons related to each other.* Thus, father and son are in the first degree; grandfather and grandson in the second degree; a brother's son and a paternal uncle in the third degree; and children of brothers are in the fourth degree. Collaterals if descended from the same parent, are called *bilateral* or *unilateral*, if they

have only one common parent. Collaterals of the former kind are commonly called *german*. If the common ancestor is a father, unilaterals are called *consanguinean*, but if a mother *uterine*. *Affinity* is the tie which takes place in a marriage between the wife and the relations of the husband. Among *artificial* persons are the state, the treasury, corporations of every kind, religious institutions, and lastly inheritances in abeyance.

## II.

### *Of Things.*

In general, whatever is not a person, but is the object of a right is called in law a thing.

Thing in a particular sense is whatever, from its nature, is capable of being property.

Things *incorporeal* are rights.

Things *corporeal* are *moveable* or *immoveable*.

Things *moveable* are those which can be moved from place to place without injury to their substance or shape.

Things *immoveable* are those which from their nature cannot be removed, or in contemplation of law have become so.

Things are also divided into *fungible* and *non-fungible*. The former are those which are considered in regard to *quality* and *quantity*.

Things *non-fungible* are those which have to be regarded in *species*. Thus, corn is a thing *fungible*, and a painting a thing *non-fungible*. Things are either *simple* consisting of similar particles in their nature coherent, or *compound*, composed of parts united into one, as a house or a ship.

Things are also *divisible* or *indivisible*, as an animal.

Things are either *principal* or *accessory*. The former are those which exist independently of any other things.

Whatever appertains to the principal thing or is united to it, is called *accessory*.

Things in regard to ownership belong to nobody (*nullius*) or are owned (*alicujus*).

Things belonging to one or several individuals, are called *private*, to a corporation *res universitatis*; to the state, *public*.

*Res extra commercium* are those which cannot be the property of anyone. Of this kind are (1) things of *divine right* which are either *sacrae*, *religiosae* or *sanctae*; (2) things of *public right* (*res publici juris*) and among them are not only things common to the state as theatres, *stadia*, but even things the use of which is common to all mankind as the sea, the sea-shore and flowing water.

### III.

#### *Rights over things.*

Absolute ownership was called *dominium* and comprehended the right to possess, use and dispose of a thing, as well as to prevent its alienation by others.

*Possession* was the detention by any person of any corporeal thing, with the intention of retaining it for himself. Freedom of property enabled an owner to exercise all the rights incident to ownership, according to the nature of the property, but if the property was subject to any rights in favour of another person, so that the ownership was modified, the property was said to *serve* another. Thus when the owner of property was under an obligation to *allow* or *not to do* a particular thing on his property, the person in whose favour the obligation existed was said to have a *servitude*. If the servitude was connected with land, it was called *rural*, or *urban*, if relating to buildings. There were also servitudes called *personal*, which were created for the benefit of an individual only, and terminated at his death. *Emphyteusis* was the hire of land, at a rent from year to year, or for a definite period, to cultivate and improve, with liberty to the tenant to use the land as his own, and to dispose of it without deterioration to the property. *Superficies* was the hire at a rent of buildings on the surface of land, with the same rights and obligations as *emphyteusis*.

*Pignus* was a real right granted to a creditor for his security. Of this right there were two kinds, one called *pignus* when the thing, over which the right existed, was delivered to the creditor; and the other called *hypotheca* when it was not so delivered.

One of these modes was called *occupation* from the maxim: *Res nullius cedit primo occupantis*. Whoever possessed himself of property which never had an owner, with the intention of retaining it for himself, acquired by *occupation* the property.

*Accession* was the right of the owner of property to its increase by natural causes, agreeably to the maxim: *A thing accessory follows the ownership of the principal thing*. *Tradition* was the delivery of anything by the true owner, with the intention of transferring it to the person to whom it was delivered.

*Donatio* or gift was also a mode of acquiring property. Of gifts there were two kinds, one *inter vivos* and the other *mortis causâ*.

The former was a gift when there was no prospect of death, and could not be revoked by the donor without cause. Delivery of the article, as in the case of a sale, was also requisite. A *donatio causâ mortis* was a gift in expectation of death, in case the donor should happen to die, but to be returned should the recipient not survive the donor, or the latter should revoke his gift.

*Arrogation* was the acquisition of the goods of one *sui juris* by the person into whose family he was adopted.

By *testaments* property might also be acquired. A testament derived its name from the testimony of the mind (*testatio mentis*) of a person regarding the disposition he wished to be made after his death, of his property. In ancient times there were two kinds of wills, one used in times of peace called *calatis comitiis*; the other when going to battle, and called *procinctum*. There was subsequently introduced a third kind of testament called *per aes et libram* because made by emancipation, an imaginary sale in the presence



of five witnesses, and the balance holder (all Roman citizens above the age of fourteen) as well as of the person called the purchaser. The two former kinds of will fell into disuse, but the third *per aes et libram* continued in part to exist, as in fact the same number of persons (seven) was required to witness another kind of will, introduced by the edict of the praetor. The seals of the witnesses were also requisite, but the imaginary sale (*emancipatio*) was abolished. Imperial constitutions afterwards required that the testament should be made all at one time, in the presence of seven witnesses, with the subscription of the witnesses and their seals appended. Justinian also decreed as a preventive against fraud, that the name of the heir should be written in the hand of the testator or his witnesses. All the witnesses might use the same seal. Those incompetent to make wills were sons under power, slaves, foreigners, persons under age, people deaf and dumb, madmen, and prodigals under interdict. A will might be written on any material. A child must have been either appointed heir or expressly disinherited, or the testament would be inoperative. Prior to the reign of Justinian, daughters might have been disinherited *inter caeteros*. The institution of the heir was another essential of a testament. *Fidei commissa* were injunctions contained in a will to the heir, to transfer to a person named, the whole or part of the inheritance.

*Codicils* were any testamentary indication of a testator, not operative as a will.

Where a person died leaving no will, or the will was inoperative, he was said to die *intestate*, and the division of his property was then regulated by law.

*Usucapio* was another mode of acquisition by which a person obtained the property in a thing which he had possessed as his own for a long period. By the civil law it was declared that whoever in *good faith* had acquired by purchase, gift, or other just cause, a thing from one whom he believed to be the owner, although not in reality should be entitled to it if *moveable*,

wherever it was situate after one year, and if immovable and situate within Italy, after two years. By an ordinance, however, of Justinian, the period of *usucapion* for moveables was declared to be three years, and for immovables within the Roman dominions, the possession *longi temporis* or the respective periods of ten and twenty years, according as the parties were or were not in the same province, were prescribed. Freeman, things sacred or religious, fugitive slaves, stolen articles, or things obtained by force could not be the object of *usucapion*.

#### IV.

##### *Rights against Persons.*

*Rights against persons* were usually termed obligations. An obligation was a legal tie, binding one to the performance of any particular thing. Obligations might arise from *contract*, *quasi contract*, *delict*, and *quasi delict*. Obligations by contract were formed by the *thing verbal*, *written*, or by *consent*. The principal contracts by the thing were *mutuum* and *commodatum*. *Mutuum* was the loan of articles for an equivalent to be given in things of the same nature and quality. Thus a loan of oil, wine, and coins was termed *mutuum*.

*Commodatum* was the loan of a thing to be returned, as a picture. An obligation by *word of mouth* was contracted by means of a question and an answer, as when we stipulate that anything shall be done or given for us. Formerly, certain solemn words were required to be used, but afterwards any words indicating consent were sufficient. The mode of contract was termed *stipulatio*.

An *obligation in writing* was an entry in tablets of the names and other particulars of a contract. Thus, if any one put down in his ledger that he had advanced such a sum of money to another, (*expensum referre*) this entry was an admissible proof of the fact. If the

debtor also had made a corresponding entry in his ledger (*acceptum referre*) the tallying of the two made together what was called an *obligatio in literis*. *Sandars*. *Obligations by consent* were those in which the mere consent of parties was sufficient, as in contracts of sale (*emptio et venditio*); letting to hire (*locatio et conductio*); partnership (*societas*); and an honorary commission (*mandatum*.) *Obligations quasi ex contractu* originated from various circumstances. Thus by or against the manager of the affairs of an absent person, between tutors and minors, joint owners, heirs, heirs and legatees, and for money paid by mistake (under certain circumstances), obligations *quasi ex contractu* arose, there being no express contract.

*Obligations from delict* arose from theft, robbery, damage, or injury. *Theft* was any fraudulent removal of property with a view of gain. *Robbery* was the forcible removal from another of property, with the intent to gain.

*Damage* was any detriment to a person's goods, from the fault or wrongful act of a freeman. The law of Aquilius (*Lex Aquilia*) contained the regulations on this subject.

*Injury* in a general sense was any illegal act. In a more special sense, the word signified insult (*contumelia*) and sometimes an unjust decision of a judge.

*Obligations from quasi delict* arose from wrongful acts, which were not true delicts in the sense of Roman law. Thus when things were thrown down, or anything was thrown down from a room, the occupant was liable, if in their descent they injured or killed any person. Persons who had placed anything above a highway were liable if it fell and injured anyone.

For theft by any person in the service of a ship, the master was liable.

Obligations were dissolved by the payment of what is due or the delivery of anything else substituted, with the consent of the creditor. *Acceptilatio* and *novatio* were also modes of dissolving obligations. Obligations formed by *consent* were dissolved by a mutual agreement to the contrary.

## V.

*Of Actions.*

*An Action* was the right to take proceedings at law for whatever might be due to a person.

Actions in regard to the *origin* were either *civil* or *honorary*, according as they had been introduced by the civil law, or the edicts of praetors. *Praetorian* was accordingly a term by which honorary actions were frequently designated. In regard to their *subject*, actions were either *real*, *personal*, or *mixed*. *Real* actions also called *vindicationes* were those by which property or a right to a thing was claimed.

*Mixed* actions were those which partook of the nature both of personal and real actions.

The *object* of actions was to recover a thing, a penalty, or both. Actions which had to be decided according to strict law, were called *actiones stricti juris*, while those in which the judge might determine according to equity and good faith, were termed *actiones bonae fidei*. Actions which did not expire by length of time were in the older Roman law, called *perpetual*, while those which expired unless brought within a certain time, were called *temporary*. In the more modern Roman law, actions which were previously perpetual, in general expired, unless brought within 30 years.

This rule was however subject to several exceptions.

Actions descend in general not only *actively* to heirs, but also *passively* against heirs. Penal actions, with the exception of "injuries" descend *to*, but not *against* heirs, unless they had been benefited by the delict of their ancestor. Actions partaking of the nature of punishment do not descend *to* heirs, but only *against* him. In the latter case, the cause of action could not be a delict. A penal action, as well as an action partaking of the value of punishment (*vindicta*) if commenced by the ancestor, descended to and against heirs.

The person against whom the action was brought

(*reus*) could defend himself by an exception, (*exceptio*) consisting of a denial of the facts; the allegation of new facts, showing that the cause of action no longer existed; and the allegation of the existence at the date of the cause of action of circumstances, rendering the action of the defendant *unjust*, as fraud, violence. Strictly speaking, exceptions belonged to the formula system of Roman law, and during that period an action might be brought a second time for the same cause of action. The person against whom the action was brought, however, might defend himself, by an exception of *rei judicatae*, or the previous adjudication of the cause.

Exceptions were also *perpetual and peremptory*, or *temporary and dilatory*. The former were those which for ever formed an obstacle to the success of the demandant in an action, as the exceptions of fraud, violence, or a compact not to sue.

*Temporary and dilatory* exceptions were those which merely delayed for a time an action. Thus, if the defendant in an action had made a compact not to take proceedings for five years, the person sued might defend himself by an exception to that effect.

Actions brought on behalf of others, by persons not entitled to act as praetors, as women or soldiers, might also be defended by dilatory exceptions. *Infamy* was another instance of a dilatory exception, but was abolished by Justinian.

A replication was an additional allegation of the demandant answering the exception of the defendant. Thus, if a creditor agreed not to sue, and afterwards an agreement was made to sue, the replication would state the latter agreement, and so destroy the effect of the exception. The replication might be avoided by a *duplication* of the defendant. The *duplication* of the defendant might be repelled by the *triplication* of the demandant; and thus these mutual allegations of demandant and defendant might continue according to the requirements of the suit. *Interdicts* were formulae

by which the praetor ordered or forbade anything to be done.

The principal division of interdicts was into prohibitory, restitutory, and exhibitory.

*Prohibitory* interdicts, forbade something to be done.

*Restitutory* interdicts, ordered something to be restored.

*Exhibitory* interdicts, ordered the production (*exhibitio*) of a thing or a person.

A second division of interdicts, was into simple or compound. *Simple* interdicts, were those in which one person was demandant, and another defendant. *Double* interdicts, were those in which each party was equally demandant and defendant, as in the interdicts *uti possidetis* and *utrubi*.

Groundless litigation was prevented by the infliction of a *pecuniary penalty*, in some cases by the *imposition of an oath*, and in others, by *degradation to infamy*.

In bringing any action, the first step to be taken was the *vocatio in jus* or the personal citation of the defendant before the magistrate, who had the jurisdiction. Permission from the praetor to summon ascendants, or patrons, or the ascendants, or children by patrons was required by children, and freedmen under a penalty.

A judge was required to decide according to the laws, the constitutions and custom.

## BOOKS OF REFERENCE ON ROMAN AND CIVIL LAW.

Bowyer's Civil Law.

Colquhoun's Roman Civil Law.

Code Civil.

Cumin's Manual of Roman Law.

Digest. The last two titles, *De Verborum Significatione*  
and *De Regulis Juris*.

Gaius. Books 1 and 4.

Institutes of Justinian by Heineccius.

„ „ Ortolan's, or Sandar's Edition.

Mackeldii Systema Juris Romani Hodie Usitati.

Ortolan's Generalisation du Droit Romain.

Phillimore's Principles and Maxims of Jurisprudence.

„ Introduction to the Study of Roman Law.

Warnkönig's Institutiones Juris Romani Privati.

## QUESTIONS ON ROMAN AND CIVIL LAW.

### *History of Civil and Roman Law.*

Q.—State the order of time in which the different portions of the *Corpus Juris* were compiled. What branches of the older Roman Law enter into each of them? By whom, and to what extent had the experiment of Justinian been anticipated?

Q.—Give a brief sketch of the attempt made in the 12th century to introduce Roman law into England. By what channels has Roman law made its way indirectly into our system?

Q.—Who were the Roman Jurisconsults, and what was the nature of their influence on Roman law?

Q.—What portion of Roman jurisprudence is contained in the pandects? What do you conceive to be the principle which guided the compiler of the pandects in the arrangement of subjects?

Q.—What were the policy and principal provisions of the *Lex Falcidia*, of the *Senatus Consultum Pegasianum*, and of the *Senatus Consultum Trebellianum*? What changes did Justinian introduce into the law regulated by these statutes?

Q.—What were the various modes by which legislation was effected by the law of Rome? What was the force of a *Plebiscitum*, and of a *Senatus Consultum* at different periods of Roman history?

Q.—What were the sources of Roman law posterior to the time of Justinian?

Q.—What works of consolidation and codification of the Roman law were in existence at the time when Justinian came to the throne?



Q.—Shortly describe the works of consolidation and codification in the reign of Justinian, and state the time occupied in the construction of each.

Q.—What mode was adopted to facilitate reference to the different codes of Justinian? Give the theory of Blume, explaining the rapidity of the execution of the digest.

Q.—Describe briefly the works of consolidation of the French law anterior to the Code Napoleon.

Q.—Shortly explain the progress of the French law, which resulted in the Code Napoleon.

### *Nature of Roman and Civil Law.*

Q.—*Quod principi placuit habet vigorem legis. Sine scripto jus venit quod usus approbavit.* Explain the meaning of these maxims. In what sense, and with what limitations can they be accepted as principles of general jurisprudence?

Q.—Give a definition of the Law Natural. When such an expression is employed, what assumptions are made with reference to the essential character of law?

Q.—Explain carefully the nature of that portion of their system which the Roman jurisconsults specifically denominate *Jus Civile*. What was it in theory? How and through what organs was it developed in practice?

Q.—Define *Senatus Consultum*. To what class of doubts does Gaius allude when he says, *Senatus consultum legis vicem obtinet quamvis fuerit quaesitum*? In what cases, and upon what persons were *Senatus Consulta* absolutely binding *in liberâ republica*.

Q.—What did the Roman jurisconsults understand by a law of imperfect obligation? If there be such a law what is its relation to a law proper?

Q.—Explain the nature of the Praetor's office, and the relation in which he stood to the *Jus Civile* on the one hand, and to the *Jus Honorarium* on the other. Was there at Rome any conflict of jurisdictions?

Q.—What was the probable origin of the Praetor's Edictal Jurisdiction? Give a brief account of the principles on which it was ultimately exercised.

Q.—What form did the distinction between legal and equitable rights assume in the older Roman law? Why was the importance which attached to this distinction in Roman jurisprudence inferior to that which belongs to it in English law?

Q.—How ought the expression “*jus gentium*” to be translated, and what relation did the system known by this name bear to the rest of the Roman law? What is the Latin equivalent of “International Law?”

Q.—What are the nature, requisites, legal force, and proof of customs according to modern civil law?

Q.—“*Omne jus quo utimur vel ad personas pertinet, vel ad res, vel ad actiones.*” Is this distribution complete? What is the relation of the law of persons to the law of things? Are there any portions of the law which may be classed indifferently under either of those departments?

Q.—What do you consider to be the sanctions of natural law?

Q.—Define accurately the meaning of the expression “Common Law,” when used with reference to English law, and state the various theories explaining its source. Give the meanings attached to the term by Continental jurists.

### *Maxims and Definitions.*

Q.—Explain the meaning and application of the following maxims and rules:

(1.) *Proximus est cui nemo antecedit; supremus est quem nemo sequitur.*

(2.) *Nemo potest mutare suum consilium in alterius injuriam.*

(3.) *Non solet deterior conditio fieri eorum qui litem contestati sunt sed plerumque melior.*

(4.) *Rapienda occasio est quae praebeet benignius responsum.*

(5.) *Fraudis interpretatio semper in jure civili non ex eventu duntaxat sed ex consilio quoque desideratur.*

Q.—Explain the following technical terms in

**Roman Law :** *Culpa Lata, Diligentia, Custodia, Cusus, Mora.*

Q.—Explain the meaning of the following definitions and rules of Roman Law :

(a) *Rei appellatione et causa et jura continentur.*

(b) *In generali repetitione legatorum etiam datæ libertatis continentur.*

(c) *Potest reliquorum appellatio et universos significare.*

(d) *Usura pecuniæ quam percipimus in fructu non est quia non ex ipso corpore sed ex aliâ causâ est, id est, novâ obligatione.*

(e) *Magna negligentia culpa est; magna culpa dolus est.*

(f) *Semper in obscuris quod minimum est, sequimur.*

(g) *Nuptias non concubitus sed consensus facit.*

(h) *Ea quæ raro accidunt non temere in agendis negotiis computantur.*

Q.—What is meant in modern Roman law by the expression “legal transaction?”

Q.—Define a *Real Action*, a *Personal Action*, a *Litis Contestatio*, a *Dilatory Plea*, an *action bonæ fidei*, and a *popular action*.

Q.—Explain the meaning and effect of the following dicta and maxims :—

(a) *Quæ dubitationis tollendæ causâ contractibus inseruntur, jus commune non lædunt.*

(b) *Dolus malus est petere quod statim redditurus es*

(c) *In ruitus caesis ea quæ terrâ non tenentur quæque opere structili tectoriore non continentur.*

Q.—Explain and illustrate the following rules and propositions :—

(a) *Verbum “oportere” non ad facultatem judicis pertinet, qui potest vel pluris vel minoris condemnare sed ad veritatem refertur*

(b) *Quoties acquitatem desiderii naturalis ratio aut dubitatio juris meratur, justis decretis res temperanda est.*

Q.—Explain the meaning and application of the following rules and texts :—

(a) *Ob hoc quod furto pridem subtracta est abest et ea res quae in rebus humanis non est.*

(b) *Si cum fundum tibi darem, legem ita dixi "uti optimus maximusque esset" et adjeci, jus fundi deterius factum non esse per dominum praestabitur amplius copraestabitur nihil.*

Q.—Explain the meaning of the term "*Impossibilis conditio pro non scripta habetur.*" To what department of Roman jurisprudence is it confined? Does it obtain in English law?

Q.—Explain the following definitions and rules:—

*Litus publicum est quatenus qua maxime fluctus exaestuât. Idem juris est in lacu nisi is totus privatus est.*

*Satisfactionis appellatione interdum etiam repromissio continetur, quâ contentus fuit is cui satisfactio debetur.*

*Jura sanguinis nullo jure civili dirimi possunt.*

Q.—Explain the meaning of the following technical expressions:—"Res Nullius," "*Res Religiosa*," "*Inventio*," "*Conditio casualis*," "*Tempus Civile*," "*Deditio Noxae Causa*," "*Traditio Brevi Manu*."

Q.—Give examples of the application of the maxims:

(1) *Pro facto accipitur id in quo per alium morae sit quominus fiat*

(2) *Bona fides tantundem possidenti praestat quantum veritas quoties lex impedimento non est.*

Q.—Define *Res Communes*, *Res Civiliter Dividuae*, and *Res Naturaliter Dividuae*.

Q.—State the meaning and application in English and Roman law of the following maxims:—

(1) *Cum de fraude disputatur, non quid habeat actor sed quid habere non potuerit considerandum est.*

(2) *Nemo plus juris ad alium transferre potest quam ipse haberet.*

Q.—Give some of the principal applications of the rule:

*Commoda cujusque rei eum sequuntur quem sequuntur in commoda.*

Q.—Explain the meaning of the following definitions and maxims:—

(a) *Nihil aliud sunt "jura praediorum," quam praedia*

*qualiter se habentia, ut bonitas, salubritas, amplitudo.*

(b) *Culpa est immiscere se rei non ad se pertinenti.*

(c) *Cujus per errorem dati repetitio est, ejus consulto dati donatio est.*

(d) *Quod contra juris rationem receptum est, non est producendum ad consequentia.*

### *The Law of Persons.*

Q.—At what period of life, and under what circumstances was a Roman citizen placed in the full exercise of his rights? What were the disabilities which, under Roman law, would prevent usucapion, and prescription from running.

Q.—Explain the meaning of *Capitis deminutio*, and enumerate its forms, tracing them all to a common origin.

Q.—In what respects did the legal position of an enfranchised slave differ from the status of a free-born citizen: (1) under the Roman law as remodelled by Justinian; (2) under the *Leges Junia*, and *Oelia Sentia*?

Q.—What view did the Roman law take of the condition of the unborn child?

Q.—What advantage has the Prussian Code which arranges the law of persons after the law of things?

Q.—What are the leading principles which in Roman law govern the legal relations of a corporation, and its members? What is a *Universitas Ordinata*?

Q.—Explain clearly the nature of the Agnatic Relationship, and the meaning of the maxim: *Mulier finis est et caput familiae*. What do you conceive to be the true origin of the old rule of English law, under which brothers of the half-blood did not inherit real estate from each other?

Q.—What are the general presumptions of Roman law, with regard to the predecease and survivorship of persons, the exact time of whose death is not known?

59 Q.—Gaius (96) “*Majus Latium vocatur quum quicunque*

*Romae munus faciunt, non hi tantum qui magistratum gerunt, civitatem Romanum consequuntur."*

Do you consider it defensible?

Q.—Describe the forms of Roman marriage existing in the time of Gaius, and the legal relation in which the wife was placed by each of them to her husband. Which form of marriage is presupposed by the proposition in the Digest respecting the dotal estate? Give reasons for your answer.

Q.—In what respects did the legal view of marriage at Rome differ from that taken (1) by the canon law; (2) by the English law? What is the meaning of the maxim "*Consensus non concubitus facit matrimonium*?"

Q.—Can a man under Roman law contract a lawful marriage with (1) his wife's sister; (2) his first cousin, or (3) his father's adopted daughter?

Q.—Explain what is meant by a woman's passing *in manum viri*, and state the legal results of the process. How did these results differ from those of marriage as regulated by the later Roman law?

Q.—Explain the nature of the special protection given by the Roman law to property settled on the wife on marriage, as *Dos*. What was *Dos Aestimata*?

Q.—In what respects was the power of the husband over the property of the wife, less extensive in Roman than it is in English law? What is the rule of Roman law, as to Donations between husband and wife?

Q.—What classes of natural children did the Roman law allow to be legitimated by the subsequent marriage of the parents? Assuming the child to be capable of legitimation, would the subsequent marriage of the parents legitimate it in all cases?

Q.—What change did Justinian effect in the law of adoption? To what extent does the Code Napoleon recognize the adoptive connection?

Q.—Enumerate cases in which the *Pater familias* was liable on the contracts of his son under power.

Q.—At what period of Roman law was the *Legitimatio per subsequens matrimonium* introduced?

Q.—Give a brief sketch of the rights and duties of the patron, relatively to the freedman, whom he had enfranchised. What historical importance attaches to this department of the Roman law? Explain the meaning of the term “*Latinitas*.”

Q.—In what respects are the fundamental principles upon which depend the modern law of guardianship, and the modern law of minority distinct from those on which the corresponding departments of the Roman jurisprudence reposed?

Q.—Under what circumstances did a man under Roman law become a slave by birth? Did the English law of Villenage exhibit different rules, and if so, were they such as to contribute to the extinction of the system?

Q.—Explain the terms *Tutor*, *Curator*, *Minor*, *Pupillus*. How did a *Minor*, and a *Pupillus* differ in their power to contract?

Q.—Explain clearly the character of the Roman tutelage, and the meaning of such expressions as *auctor fieri*, *auctoritatem interponere*.

Q.—What was a *Curator Prodigii*? Does this form of *Cura* survive in any modern system of jurisprudence.

Q.—What were the special duties which a *Tutor* had to discharge immediately on entering on the tutelage of an infant *pupillus*?

Q.—State briefly the duties of the *Tutor* in regard to the property of the *Pupillus*, and mention any particulars in which you conceive the English law of trustee and *cestui que trust* to have been directly borrowed from the Roman law governing the relations of *Tutor* and *Pupillus*.

Q.—In what department of law was tutelage classed and why? What was the primitive signification of the phrases “*Auctor fieri*,” “*Auctoritatem interponere*,” Why would it have been incorrect to speak of the Roman *Curator* as “interposing his authority.”

Q.—What is the difference between the conceptions of relationship involved respectively in cognation and agnation? How is the Roman law of Testaments

affected by either of them? Which of them has descended to modern jurisprudence?

Q.—What is the position of a debtor, under Roman law, who makes a payment to a pupillus without the authority of the tutor, or the sanction of a court?

Q.—Explain the rule of the Roman law “*Utilitatem pupillorum praetor sequitur non scriptorem testamenti.*” On what grounds was this proposition defended, and how was it reconciled with the received principles upon which the law of testaments was administered.

Q.—State the general rules for computing the degrees of consanguinity. What are the modes of calculating proximity of blood adopted respectively by the civil and canon law? Which method does the law of England follow?

Q.—Under what disabilities were females placed by the Roman law of Justinian’s day? Compare their position with that of women under English law.

Q.—What validity had the acts done without the concurrence of any other person (1) by an *Impubes sui juris*; (2) by a *Minor sui juris*?

Q.—What were the obligations of a Roman father to his child? Discuss the English and Roman law upon this head.

Q.—What right had the father in the property of his child by the Roman law at the time of Justinian? State briefly the English and French law upon this point.

Q.—What was the Roman rule as to the degrees of consanguinity or affinity within which marriage was unlawful? How far were adoptive connections a bar to marriage?

### *The Law of Things.*

Q.—Of what nature was the theoretical distinction between *Praedia Italica*, and *Praedia Provinciae*. How did it practically affect the Roman law of property during the middle period of its history?

Q.—What criterion seems to have been tacitly



adopted by the Roman juriconsults for distinguishing *Res Communes* from *Res Singulorum*? What are the tests proposed for the like purpose by Grotius, Bentham, and Whewell?

Q.—Give a brief sketch of the order in which the claims of pignoratitian creditors were marshalled. To what extent was the tacking of incumbrances permitted in Roman law?

Q.—Enumerate the cases in which the *jus pignoris* arose through obligations not strictly created by the contract of pledge? When the *jus pignoris* attached under the circumstances just indicated, in what consisted the value of the rights which it conferred? How is its place supplied in English law?

Q.—How did the Romans define a *Donatio Mortis causâ*? In what respects were the rights and duties of Donees *Mortis Causâ* identical with those of legatees?

Q.—What conditions must be satisfied under Roman law in order that a title to property may be gained by prescription? How did the English words “usurp” and “usurper” acquire their meaning.

Q.—What is the general doctrine of Roman law as to the acquisition of property in *Res Inexhausti Usus*? Did the Roman law permit rights of property to be acquired in the sea-shore?

Q.—When are things *divisible* and *indivisible* in the sense of the Roman Law?

Q.—On whom does the Roman Law impose the obligation to keep a servient tenement in such a state that the servitude can be fully enjoyed? What is the general rule of English law on the point?

Q.—Define things fungible, things aggregate, and things accessory. What is the leading rule of Roman Law concerning things principal, and things accessory? Define and classify outlays, fruits, and appurtenances according to Roman Law.

Q.—What is the difference between the Roman and Canon Laws as to the validity of the *bona fides* of the person prescribing?

Q.—What changes in proprietorship are effected by alluvion, commixtion, and specification?

Q.—What rules are followed by the Law of England in the case of a Specification?

Q.—What are the principal obligations which the Roman law imposes on a mortgagee when he proceeds to realize his security?

Q.—State by what operations of mind and body possession is gained and lost in Roman law.

Q.—What is the Roman law on the subject of buildings erected by A. with his own materials, and *bonâ fide* on the land of B.? In what points do the rules on the subject conflict with the feudal principles?

Q.—Enumerate and explain the conditions which must concur in order that Usucapion of an Immoveable Thing may be effected?

Enumerate the exception to the rule of Roman law that rights of action last thirty years.

Q.—What was the original meaning of *Jus Accrescendi*? How is it that in modern law the *Jus Accrescendi* has come exclusively to be associated with Survivorship?

Q.—Distinguish a Praedial from a Personal Servitude, and both of them from a Personal Obligation.

Q.—Explain briefly in what respects the position of a person who hired a house from year to year under Roman law, would differ from that of a yearly tenant under our system.

Q.—What are the requisites of a legal servitude?

107 Q.—State the principal rules of Roman law concerning the acquisition of right to wild animals, and treasure trove.

Q.—Analyze carefully the signification attached by the Roman lawyers to the words *Dominium* and *Obligatio*. In what consists the scientific importance of the distinction between them? When, and under what circumstances did the expressions *jus in re* and *jus ad rem* come into use? To what objection are they open? Through what changes of meaning has the term “obligation” passed?

Q.—What were *impensae*, and what facilities did the Roman law give for their recovery?

Q.—In what way has the feudal element in modern jurisprudence affected the provisions of Roman law in respect of *Res Nullius*.

Q.—It is a maxim of Roman law that no man can give a better title to property than he enjoys himself. State how this rule can be reconciled with the principle of Usucapion, and whether it obtains in English law.

Q.—Is there any rule against perpetuities in Roman law? Give reasons for your answer.

Q.—What is the exact relation of the conception indicated by a *Universitas Juris* to *Jura ad rem* and to *Jura in re*?

Q.—What is the distinction between affirmative and negative servitudes?

Q.—What is the meaning of the rule that servitudes “*neque ex tempore, neque ad tempus, neque sub conditione, neque ad conditionem constitui possunt*?” How was it practically evaded? Is there any difficulty connected with the subject of Roman servitudes which the rule explains?

Q.—What were the respective proprietary rights in Roman law of persons enjoying the *dominium directum*, and the *dominium utile*? What are the principal modifications of property sanctioned by Roman law, which strike you as having exercised an influence on feudal dependencies?

Q.—Enumerate the objects comprised in the older Roman law under the head of *Res mancipi*. Was this department of *Res nec mancipi* co-extensive with the entire residue of the subjects of property? Are there any reasons for supposing that a distinction analogous to that between *Res mancipi* and *Res nec mancipi* is universally characteristic of law in its infancy? What was the *in jure cessio*, and for what purposes was it resorted to?

Q.—Give a definition of Occupancy. Is the definition of the Roman law at all modified by Bracton?

To what extent has the principle of occupancy been interfered with by the successive English game laws.

Q.—What was the chief beneficial use which you suppose to have been served by Usucapion at the era of Gaius?

Q.—Why is it that the modes of acquisition by commixtion and adjunction constitute a subject of much greater importance in Roman than in English law?

Q.—What is the difference between a rural and an urban servitude?

Q.—What are the leading rules of Roman law which determine the consequences of ignorance or mistake of law on the one hand, and those of ignorance and mistakes of fact on the other? What is the principle which is the basis of the distinction recognized by these rules? Are those of English law exactly identical?

Q.—Why, under Roman law, is a perpetual right to take water from the cistern of another not a good servitude?

Q.—What particular estates “in land” did the Romans recognize, and in what part of their system did they class them?

Q.—State the mutual rights and obligations, under the Roman law, of mortgagor and mortgagee. What rules of the English law of mortgage do you consider to be derived from Roman law?

Q.—What is the chief difference between the Feudal and the Roman conception of property in land, and how did it arise?

Q.—Define *Emphyteusis*. Briefly state the rights and duties of the *Emphyteuta* and *Dominus* respectively. What tenure has been referred to this mode of ownership?

Q.—What is *Superficies*? and why, under the Roman law, were *Emphyteusis* and *Superficies* classed by themselves, as distinct forms of ownership?

Q.—A., *bonâ fide*, purchases land of B., whom, at the time of such purchase, he believes to be the true

owner. C., the true owner, afterwards recovers the land. Can C. recover from A. the value of the fruits and crops gathered or consumed by A. while in possession? What is the English law upon this point?

Q.—A. enters into a valid contract of sale with B. for the absolute purchase of a chattel, ascertained and identified at the time of the sale, and the price is agreed upon. Nothing further takes place. The chattel is destroyed by inevitable causes. Upon whom, by the Roman law, does the loss fall? State the English and French law upon the same subject.

Q.—Define “servitudes” by the Roman and French law respectively, and “easement” by the English law.

Q.—By what modes can servitudes be created or extinguished by the Roman law?

Q.—In a case, under the English law, the time of prescription has begun to run, but the person against whom the prescription is running goes abroad before the full period of prescription has elapsed? What effect is produced? Give the Roman and French law upon the same head.

Q.—What was the importance of the Roman distinction between *Res extra commercium* and *Res in commercio*? What was the effect of attempting to purchase or alienate an object belonging to the former class?

Q.—What change did Justinian effect in the nature of ownership, and what further alterations did this change entail? What was the office of tradition before and after the change?

Q.—What was the *Negotiorum gestio*? In what category was it ranged by the Roman Jurists? and in what cases did it arise?

Q.—What was implied in the Roman law by the expression “Natural modes of acquiring property?” Through what range of ideas came tradition to be ranked amongst them?

## TRANSFER OF RIGHTS.

Q.—Explain the phrases *Haereditas Delata*, *Haereditas Adita*, *Testamentum Ruptum*, *Testamentum Destitutum*.

Q.—What was the Cretion and Inventory, and what was their relation to one another? How is the office which they discharge performed in England? What is the state of the law of England on the subject of *Pro Haerede Gestio*?

Q.—Who were necessary heirs? For what purpose was a slave of the testator occasionally named his heir? In what did the practice originate?

Q.—Under what circumstances did the Roman law make a codicil binding on the intestate heirs? What reasons are there for thinking that the older Roman law allowed no force to a codicil apart from the will on which it depended?

Q.—What is a substitution? What was the object aimed at by a Roman testator in making substitutions, and why did the series of substituted heirs generally end with a slave?

Q.—State briefly the differences between English and Roman law in respect of the external and internal formalities which they require for a valid exercise of testamentary power.

Q.—What was the object of the Falcidian law with respect to a *legatum generis*, a *legatum nominis*, a *legatum liberationis*?

Q.—Give strict definitions of *Testamentum* and *Haereditas*. How far are the two conceptions dependent on each other, and which of them belongs to Universal Jurisprudence? Explain the meaning of *Haereditas acquisita*.

Q.—What common principle connects the rules of Roman law regarding the *formae internae* or internal solemnities of a will? *Nemo pro parte testatus est and pro parte intestatus potest mori*. What is the force of this maxim? In what did the more ancient interpretation of it differ from the construction adopted in the jurisprudence of Justinian?

Q.—*Lucius Titius intestato moriturus cum habeat uxorem, et ex eâ filiam emancipatam codicillis hæc verba inseruit. Pertinent hi codicilli ad uxorem filiam, primum autem rogo, sic inter vos agatis ut me vivo egistis; itaque rogo ut quicquid aut reliquere, aut quod ipsæ habetis commune vobis sit; filia intestati patris bonorum possessionem acceperit. Quaeritur an aliqua pars hæreditatis Lucii Titii ex causâ fidei commissi à filia matri deberetur et quota?* State clearly the nature of the question which is here propounded, and the principles upon which you would base your answer. At what period in Roman jurisprudence did such a codicil as is here indicated become binding upon the heir *ab intestato*.

Q.—What were military wills, and in what respects did they differ from ordinary testaments?

Q.—What was the *Possessio bonorum*? Explain its effect, and cite examples in which it was allowed to ameliorate the rigour of the *Strictissimum jus*.

Q.—What was an *inofficious* testament? At whose instance, and by what proceedings could it be set aside?

Q.—Under what circumstances does Roman law permit a bequest to be made of the following:—1. Things belonging to the heir; 2. Things belonging neither to the testator nor to the heir; 3. Things not in existence; 4. Things once belonging to the testator but alienated by him before death.

Q.—What reasons are there for supposing that the *Querela Inofficiosi Testamenti* and the *Portio Legitima* were both of comparatively modern origin?

Q.—What was there in the theory of testamentary succession which rendered the appointment of an heir the most essential feature of a Roman will?

Q.—What is meant by the proposition that a pupillar substitution involves a double will?

Q.—Is testamentary or intestate succession the more ancient institution? Support your answer by proof.

Q.—State shortly the provisions of the Roman law respecting the witnessing, signing, and sealing of wills? What was the original object of the formality of sealing?

Q.—What was the leading rule of Roman law respecting *illegal* conditions in wills? Are you able to state briefly why the difficulty in the recent case of *Egerton v. Brownlow* could never have arisen under Roman law?

Q.—What formalities did the Roman law require to be observed in opening a will?

Q.—What is the great difference recognized by Roman law between conditions in a Testament and conditions in a contract? What do you conceive to be the ground of this distinction?

Q.—Explain the expressions *dies cedit, dies venit*?

Q.—What external solemnities does the modern civil law require in a valid testament? Can a codicil be executed with fewer or different solemnities?

Q.—By what sort of succession does a legatee succeed?

Q.—What was the original distinction between a *legatum* and a *fidei-commissum*, and what were the chief changes effected in the law of legacies when legacies and *fidei-commissa* were assimilated.

Q.—Are the following good or bad legacies under Roman law:—1. To the person who shall come first to the funeral; 2. To that one among my agnatic relations who shall first obtain the consulship; 3. To Titius, in case he has not been convicted of a criminal offence by the period at which the legacy becomes payable; 4. An annuity to Seius to cease whenever he shall marry Caia.

Q.—Set out the principal rules of Roman law on the subject of ademption of legacies. In what respects are the principles followed by English lawyers on this subject simpler than those which obtained at Rome?

Q.—What are the Roman expressions corresponding with the English phrases, “Pecuniary Legacy,” “Demonstrative Legacy,” “Specific Legacy.”

Q.—When legacies abated to make up the Falcidian portion, in what order did they abate?

Q.—What are the Roman equivalents to the following expressions:—General legacy, satisfaction of debt by legacy.



Q.—What was the position of a *legatarius partiaris* as regards his liability to contribute for the payment of debts?

Q.—State concisely the more general rules of Roman law regulating the vesting of legacies of which the enjoyment is deferred.

Q.—Explain the maxim *dies incertas conditiones facit in Testamento*.

Q.—What advantages were conferred by the *hypotheca*, which Justinian gave to legatees? What was the difference in principle between a legacy or singular *fidei-commiss*, and an aliquot share of the inheritance?

Q.—What was the *Legatum poenae nomine*, and why was it invalid?

Q.—What are the Roman equivalents to the following expressions:—Condition precedent and condition subsequent.

Q.—Under what circumstances did the relation between a *Fiduciary* and *Fidei-Commissary* Heir first begin to exist at Rome?

Q.—How far does the relation of *Fiduciary* and *Fidei-Commissary* legatee resemble that of trustee and *cestui que trust* under the English law? When Justinian attached to legacies the qualities of *fidei-commissa*, in what did the importance of the change consist?

Q.—What measure of *certainty* did the Romans apply to bequests?

Q.—Explain the rule “*tot asses haereditatem efficiunt quot Testator remisit*.”

Q.—Under what circumstances, in the latest Roman law, will an incomplete testamentary disposition affect intestate heirs?

Q.—Explain the phrases *Quarta Falcidiana*, *Portio Legitima*, *Quarta Pia*.

Q.—What were the cases in which a testament, once valid, became subsequently of no effect?

Q.—What was the “Rule of Cato” on the subject of Testamentary Dispositions?

Q.—Define “*Cessio in Jure*.” What analogous mode of conveyance formerly existed in the English law?

Q.—Define “*Traditio*.” What were the essentials requisite to give it validity? In what cases, by English law, is simple tradition valid to transfer property, and to what extent?

Q.—What were the principal modes of conveyance of property *inter vivos* by the Roman law anterior to Justinian?

Q.—What were the different classes of *instituted* heirs? What is meant by a *substituted* heir?

Q.—What securities has the legatee under Roman law for the due payment of his legacy by the heir?

### *Obligations.*

Q.—Define an Obligation and a Contract, and explain in what the modern meaning of obligation differs from that which is found in the *Corpus Juris*.

Q.—Explain what is meant by saying that in Roman law an obligation includes the right as well as the duty.

Q.—Under what circumstances might interest be stipulated for in Roman law? When it was not stipulated for, in what cases was it due?

Q.—Give a brief sketch of the doctrine of the pandects as summed up by Mühlenbruch on the subject of time. What distinction did the Roman law recognize between Natural Time and Civil Time.

(a) *Proximus est cui nemo antecedit; supremus est quem nemo sequitur*. What class of questions is solved by the application of this rule? Do you consider it defensible in principle?

Q.—Define *Convention* and *Consensus* and describe the manner and order in which the ideas expressed by these terms enter into the complete conception of a contract. Reconcile with your definition of *Consensus* with the word *Consensual* in the phrase *Consensual Contracts*, and with those of *Pactum* and *Conventio* the

expression *Exceptio pacti conventi*. What was the nature and efficacy of this last exception?

Q.—Define and give instances of a *quasi* contract, and state which of the essential ingredients of a true contract is wanting in it?

Q.—What are the rights and duties of co-sureties under Roman law—(1) by the *Jus Civile*; (2) as modified by imperial constitutions.

Q.—Explain the *Stipulatio*. In what cases was a *Stipulatio* said to be *inutilis*? and state the principal causes of this result.

Q.—State whether, and to what extent, a Roman contract was invalidated by mistake (1) as to the nature of the thing contracted to be done; (2) as to the contract itself; (3) as to the person of one of the contracting parties.

Q.—What is the doctrine of the modern Roman law on the subject of set-off? Does it differ in any respect from that of the earlier jurisprudence.

Q.—What are the rights and duties of a Pawnee under the civil law? What were the grounds of the unwillingness manifested by the later juriconsults to consider pledge a contract?

Q.—Define delay in the sense of Roman law, and enumerate its principal consequences.

Q.—Mention any of the broader features of distinction between the Roman law of Principal and Agent, and the English law on the same subject.

Q.—What was the Roman contract of *Emphyteusis*? Why did the Roman juriconsults consider it anomalous? What is the historical interest which attaches to it?

Q.—What is the Literal Contract of Modern Civil Law? What do you consider to be its counterpart in English contract law?

Q.—What is the *Pactum Donationis*? What conditions does the Roman law prescribe for a valid *Donatio inter viros*?

Q.—In compromises of Roman law, what effect is allowed (1) to mistakes of law; (2) mistakes of fact

under which the compromising parties laboured at the time of agreeing to the compromise?

Q.—What is the nature of the conditions which are indicated by the following epithets:—Casual, Potestative, Suspensive, Resolutive, Derisory, Affirmative, Negative.

Q.—What principle governs the four-fold classification of contracts in Roman law?

+ Q.—What are the facts which, in later Roman law, could be made the foundation of actions?

Q.—Define a *Pollicitation*, and state the circumstances, if any, under which it can become the ground of an action. Is a pollicitation a necessary ingredient in every contract?

Q.—What did the old Roman law, in all cases, indicate by the adjunct “*Quasi*?”

Q.—What are the modes of discharging an obligation known respectively as “solution, acceptilation, novation, and *consensus contrarius*?”

Q.—How far, in the more recent jurisprudence, did the distinction between Pacts and Contracts cease to be important? What were the *Pacta Adjecta*?

Q.—How do conditions differ from modes in their nature and their legal consequences?

Q.—What general rules does the modern civil law lay down as to the effects of ignorance and mistake?

Q.—What do you consider to be the principle which, in Roman law, governs the rate of discount.

Q.—What metaphor does the Roman definition of an obligation seem to involve, and are there any legal consequences which appear to be connected with the fundamental metaphor?

Q.—What is meant in Roman law by “eviction?” When eviction is threatened, what are the duties of the vendee? And when it is effected, what are the consequences to the vendor?

Q.—On what principle would you defend the favour shown in English Courts of Equity to purchasers for valuable consideration? Is the Roman law characterized by any bias in the same direction?

Q.—What were the respective rights and duties of parties to the Roman contract of *Societas*, so far as they are set out in the Institutes?

Q.—What is meant in the Civil Law by the phrase “Singular Succession?”

Q.—State the distinguishing characteristics of a true Universal Succession, and say whether there are true Universal Successions in English law.

Q.—What is a *Societas Leonina*?

Q.—Are you able to account for the comparatively small space which questions regarding the liability of partners to third persons occupy in Roman law?

Q.—By what circumstances, and by what acts of the partners is a partnership dissolved under Roman law?

Q.—What were the special obligations which the Roman law imposed on Carriers and Innkeepers? What is implied when these obligations are said to grow out of a Praetorian Pact?

Q.—Define *Dolus* and *Culpa*, and state briefly in what cases it was necessary to make them good.

Q.—Name any rules of the English law of mortgage which are directly traceable to the *Jus Pignoris* of the Romans?

Q.—Describe the obligations of the parties to a contract of *locatio conductio*. In what would the legal position of the hirer of land, under Roman law, differ from that of a tenant for years among ourselves?

Q.—Was the liability of partners for the debts of the firm limited or unlimited under Roman law?

Q.—What were the auxiliary conventions which it was usual among the Romans to add to contracts of sale?

Q.—What peculiarity had the Real Contracts in respect of the power of withdrawal enjoyed by one or both of the parties?

Q.—What, in Roman law, is a Contract as distinguished from a Pact? What were the four old forms of contract, and what do you suppose to have been their historical order?

Q.—What are the principal blemishes which, in Roman law, cause a stipulation to be ineffectual (*inutilis*)?

Q.—Define *Depositum*. What were the rights and liabilities of the depositary and the creditor in the case of *Depositum* and *Pignus* respectively with regard to the thing which was the subject of the contract?

Q.—Define *Mandatum*. Trace historically the successive forms of action by which the third person with whom the *mandatarius* had dealt might be sued.

Q.—Explain the distinction between the contract of sale and exchange in the Roman law. What important differences as to the rights of the parties existed between the two contracts? Point out whether these differences exist in the English and French law.

Q.—Trace out the historical development of the Roman law of warranty against eviction.

Q.—State the provisions of the French law upon the conditions which must have been fulfilled in order to entitle the purchaser to recover against the vendor in case of eviction from the thing sold, and contrast it with the English law.

Q.—Are sales of property between husband and wife valid by the Roman, English, and French law respectively? Give the reason upon which the law of each country is based.

Q.—Define the “*sociétés civiles*” and the “*sociétés commerciales*” of the French law. By what different laws were they regulated? What is the co-relative in the French law of the “*societas universorum bonorum*” of the Roman law?

Q.—Enumerate and describe the various descriptions of “*sociétés commerciales*,” and show how each is constituted, and the responsibility of the partners in each.

Q.—What checks are provided by the French law in order to insure the proper administration of the partnership property in the *société en commandite*?

Q.—Explain the contracts of *Commodatum* and *Mutuum*. In what cases were the persons receiving a

thing as a *commodatum* or *depositum* liable for loss or damage? Give instances mentioned in the Institutes of the application of this rule.

Q.—Define *Pignus* and *Hypotheca*. What effect did the loss "*fortuito casu*" of the thing have upon the remedies of the creditor and debtor respectively?

Q.—How was the "*verborum obligatio*" created? Could it be entered into by an agent on behalf of a principal? How was it discharged?

Q.—What were the conditions essential to the validity of a sale by the Roman law?

Q.—What were the conditions necessary to pass the property in a thing sold by the Roman, French, and English law respectively?

Q.—What were the provisions of the first and third heads of the *Lex Aquila*?

Q.—What do Bentham and Austin lay down as the two main essentials of a contract? Are the views of these authors identical with those of the Roman Jurists with reference to contracts?

Q.—Define the Innominate Contracts, and explain their rise and progress. Supposing an innominate contract to have been made upon an executory consideration, what remedies had the person with whom the contract was made in case of its non-performance by the promiser?

Q.—Explain and enumerate the Consensual Contracts, and explain the maxim "*Ex nudo pacto non oritur actio*," and give its different meanings in the Roman and English law.

Q.—Define *Obligatio correalis*," "*Obligatio in solidum*," "*Reus stipulandi*," and "*Reus promittendi*." What were the distinguishing characteristics of the "*Obligatio correalis*?" How was it created?

Q.—Gaius promises to pay a sum of money to Seius, Titius, and Sempronius. To what extent is Gaius liable to Seius, Titius, and Sempronius? What would be the effect of a similar contract by the French and English law?

Q.—State the principal effects produced by the

“*Obligation solidaire*” with respect to the creditors and debtors.

Q.—In what cases does “*la Solidarité de plein droit*” take effect?

Q.—In what cases did error in respect of a matter of fact render a contract voidable by the Roman and French law? A., under a *bonâ fide* forgetfulness of facts, pays money to B. which is not due. Has A. any remedy by the Roman, French, or English law?

Q.—What are the doctrines of the Roman, French, or English law with respect to the effect of error of law upon a contract?

Q.—Is “*dolus malus*” by the French or Roman law a cause of invalidating a sale of an immoveable to a *bonâ fide* purchaser without notice from the original vendee?

Q.—Define “*metus*.” In what cases is it relieved against by the Roman law? Contrast it with the English law of duress.

### *Delicts.*

Q.—Under what head of Roman law was a physician liable to be sued for unskilful treatment of a patient? To what class of delicts did slander belong?

Q.—Under what head of delict would a Roman have to seek for damages for a trespass, for an assault, or for a libel?

Q.—How would the Roman proceed under such circumstances as those under which an English litigant would bring trover?

Q.—State the general rules of Roman law with reference to cases in which the author of damage is bound to pay for such damage. Define *Culpa Lata*, *Diligentia*, and *Custodia*.

Q.—Give the English equivalents of the torts included in the Roman “*injuria*.” What is the difference between *injuria* and *damnum injuriâ datum*?

Q.—What historical reason can you assign for the



circumstance that *furtum* was a delict in the Roman system?

Q.—Define *Furtum*.

Q.—What are the rules of Roman law for determining the person entitled to sue for theft. Compare them with the analogous rules of the English law of Larceny.

Q.—Under what circumstances was it a duty to exhibit Diligence? What were the measures of diligence?

Q.—State concisely the general rule in which English and Roman law agree respecting the degree of care which a person is bound to bestow in cases where negligence may be imputed to him.

Q.—Describe the legal question which formed the subject of Cicero's argument in the Oration *Pro Caecinâ*. Has the difficulty to which Cicero addressed himself been provided against in any modern code?

### *Actions under the Roman Law.*

Q.—What is the special meaning of the terms "*Jurisdictio*" and "*Cognitio*" in the Roman law of Criminal Process? What were their counterparts in the law of Civil Process?

Q.—Explain the following expressions: "*Actio stricti juris*," "*actio bonae fidei*," "*actio judicialis*," "*actio realis*."

Q.—Analyze carefully the principle upon which the distinction between real and personal actions depend.

Q.—For what purposes was the Interdict originally introduced? What were the principal uses which it was ultimately made to serve?

Q.—In the Roman law of civil process, as constituted previously to the reforms of Justinian, what class of remedies was allotted exclusively to the *dominus*? In what consisted their superiority to the analogous remedies provided for the possessor?

Q.—How was the Roman law enabled to dispense with the fiction known in English jurisprudence as "Special Property"?

Q.—By what stages did the *Legis Actiones* of the ancient law of civil process pass into the procedure by Formulas?

Q.—What is the great feature of difference between English Common Law Pleading and the Formulary Pleading of the Romans? Illustrate your answer by reference to the consequences in the two systems of pleading.

Q.—State briefly the nature of the *intentio* and *condemnatio*. How came it that the *condemnatio* always pointed to money damages.

Q.—Define an exception, and define the nature of exceptions.

Q.—Point out accurately the difference between Interdicts and Actions. What was the peculiar office of the Interdict *Uti Possidetis*?

Q.—What did the Roman lawyers mean by a *Fictio*? What influence did the *Fictiones* exert on the Roman law of Civil Procedure?

Q.—Give a brief analysis of the Pleadings which would be necessary under the Formulary system in an action to recover a portion of the debt payable by instalments.

Q.—What was the *Restitutio in Integrum*? Mention any points in which the rules of Roman law, having reference to this remedy, appear to have affected the jurisprudence of the English Court of Chancery.

Q.—Enumerate the facilities for recovering debts which the Roman law allowed to the creditors of a son engaged in trade. State more particularly the character of the action *de peculio et de in rem domini verso*.

Q.—Describe in general terms the nature of the *Legis Actiones*.

Q.—What are the parts of a *Formula*? What was the office of the *Judex*, and in what did the "*Ordo Judiciorum*" consist?

Q.—What are the considerations which in your view make for and against the doctrine, that the English Common Law Pleading is derived from, or is a

corruption of, the Formulary system of the Romans.

Q.—Describe in general terms the conditions which determined the admissibility of the *Exceptio doli mali*.

Q.—Explain the maxim: "*In bonâ fide iudicis exceptio mali continetur.*"

Q.—What is the meaning of the phrase *Legis Actio*.

Q.—What are the reasons for attributing a very high antiquity to the procedure in the *Legis Actio Sacramenti*?

Q.—What was a *Plus Petitio*? What consequences did it entail in Roman pleading, and why?

Q.—In what manner were Interdicts moulded so as to admit of litigated questions being tried by their means? What object was obtained by so moulding them?

Q.—How do you account for the disappearance of the penalty of death from the Criminal Jurisprudence of the Republic? In virtue of what authority did Cicero direct the execution of the accomplices of Catiline? What precedents had there been for the exercise of this authority?

Q.—What was the nature of the title which the plaintiff was bound under Roman law to establish; (1) in a common real action; (2) in a common personal action; (3) in the *actio exhibendi*; (4) in the *actio de peculio*.

Q.—What was the *Noxae Deditio* of Slaves?

Q.—What were the objects of the following Roman actions: *Actio Institoria*, *Actio Tributaria*. *Actio de Exhibendum*, *Condictio sine Causâ*?

Q.—What is the difference between a Right *in Rem* and a Right *in Personam*, and the corresponding difference between an *Actio in Rem* and an *Actio in Personam*?

29 Q.—What were the object and efficacy of the *Exceptio non numeratae pecuniae*?





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